

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

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PETITION OF HHHUNT CORP. : Case No. S-2841
NURSING HOME :
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A hearing in the above-entitled matter was held on
October 4, 2013, commencing at 9:36 a.m. in the Rita
Davidson Memorial Hearing Room, 100 Maryland Avenue,
Rockville, Maryland.

Lynn Robeson

Hearing Examiner

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A P P E A R A N C E S

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C O N T E N T S

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jennifer Russel By Ms. Walker	14			
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E X H I B I T S

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30	Plan showing building setbacks	11
31	Aerial photograph of neighborhood	12
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1 P R O C E E D I N G S

2 MS. ROBESON: This is a public hearing in the
3 application of HHHunt Corporation requesting a special
4 exception for 107 units for a domiciliary care home located
5 on 37.6 acres identified as Parcel P771 on Tax Map HT51 on
6 the east side of Georgia Avenue, approximately 1,000 feet
7 south of its intersection with Georgia -- no, wait a
8 minute -- on the east side of Georgia Avenue, a property
9 address of just Georgia Avenue, Olney 20832. This hearing
10 is conducted on behalf of the Board of Appeals. My name is
11 Lynn Robeson. I'm the Hearing Examiner, which means that
12 I'll be taking all the testimony and evidence and write a
13 report and recommendation to the Board who will make the
14 final decision in the case.

15 Is there anyone here that is not represented by
16 the applicant that is not part of the applicant's case?

17 (No audible response.)

18 MS. ROBESON: All right. Seeing none, would you
19 please identify yourself for the record?

20 MS. WALKER: Certainly. My name is Rebecca
21 Walker. I'm with the law firm of Miles and Stockbridge,
22 with offices at 11 North Washington Street, Suite 700, here
23 in Rockville, Maryland, representing the applicant, Hhhunt.

24 MS. ROBESON: Okay. Now I notice that nobody was
25 on the sign-up sheet.

1 MS. WALKER: We actually -- there is a sheet in
2 here and we signed up on that sheet and completed that, I
3 believe that Ms. Forbes, oh no, I'm sorry, they have it, the
4 technical writer has it over here.

5 MS. ROBESON: Okay.

6 COURT REPORTER: I'll give you a copy of it.

7 MS. ROBESON: What?

8 COURT REPORTER: I'll give her a copy of it.

9 MS. ROBESON: Well, we have the original and we'll
10 give you a --

11 COURT REPORTER: Okay.

12 MS. ROBESON: Wait. What is that? That's not
13 a --

14 COURT REPORTER: They only signed up on the court
15 reporter sheet, not the --

16 MS. ROBESON: Oh.

17 COURT REPORTER: -- the sheet outside.

18 MS. ROBESON: Okay. We --

19 MS. WALKER: Ms. Forbes told us that was fine, she
20 would just take a copy of it.

21 MS. ROBESON: Okay.

22 MS. WALKER: But we can re-sign in if the Hearing
23 Examiner preferred.

24 MS. ROBESON: Well, as long as all the e-mail,
25 everyone's e-mails and contact information --

1 COURT REPORTER: I only need the addresses, e-mail
2 addresses.

3 MS. ROBESON: Okay. Then so, you know, I hate to
4 be bureaucratic, but we do need, we do use the e-mails. So
5 if you could just do the sign-up sheet, that would be good.

6 MS. WALKER: Sure.

7 MS. ROBESON: All right. With that, Frank is
8 smiling. Okay. With that, do you have -- and I'm not going
9 to go through the whole, our normal explanations because
10 it's, there's no one here not represented by an attorney.
11 So do you have an opening statement?

12 MS. WALKER: I do.

13 MS. ROBESON: All right.

14 MS. WALKER: I have just a brief opening and then
15 a few housekeeping items with regard to the exhibits that I
16 think would be easier to clear up up front so we can roll
17 through the testimony a little bit smoother.

18 MS. ROBESON: Okay.

19 MS. WALKER: Okay. As you're aware, I'm here
20 representing HHHunt. They are a builder, owner and operator
21 of residential assisted living and Alzheimer's Dementia Care
22 Facilities --

23 MS. ROBESON: Okay.

24 MS. WALKER: -- in Maryland, Virginia, South
25 Carolina, North Carolina and Tennessee. We have applied for

1 a special exception in the RNC to permit a domiciliary care,
2 I'm going to say that word very carefully today, and nursing
3 home facility. We are going to present testimony today from
4 our land planner, an environmental planner, traffic
5 engineer, civil engineer, architect and then the applicant
6 is here as well to provide some testimony on the operational
7 details of the use that's being proposed.

8 MS. ROBESON: Okay.

9 MS. WALKER: As the Hearing Examiner may have
10 noted from the plethora of paper that has been submitted in
11 this case, we had some pretty substantial revisions to the
12 design since its original inception. This was originally
13 conceived as a one-story structure and a little bit more of
14 a sprawling footprint. After meetings with Technical Staff
15 at Park and Planning, as well as I think four meetings with
16 the community, as well as the adjoining fire department, we
17 have decided to revise the design to be the two-story
18 structure that you actually see before you today. So we
19 apologize for the number of trees that may have been harmed
20 in this, but we think that we have it right now.

21 MS. ROBESON: Hopefully some day we'll be on
22 project docs.

23 MS. WALKER: Yes. There will be all --

24 MS. ROBESON: Anyway --

25 MS. WALKER: -- electronic submittals. That would

1 be lovely. The changes from the original design are
2 essentially a reduction in the footprint as I alluded to,
3 reduced parking --

4 MS. ROBESON: Okay.

5 MS. WALKER: -- onsite, reduction in the overall
6 imperviousness from 13.2 to approximately 10.9 percent --

7 MS. ROBESON: Okay.

8 MS. WALKER: -- on this 38 acre tract. So that's
9 a pretty substantial reduction. The building is set back
10 approximately 300 feet from Georgia Avenue, which makes it
11 barely visible as you're driving up that corridor through
12 Olney.

13 We are preserving approximately 27 acres of trees
14 on this site which is about 72 percent of the property, so a
15 very substantial environmental benefit we think --

16 MS. ROBESON: Okay.

17 MS. WALKER: -- as a result of this application
18 and those will be preserved in perpetuity. The additional
19 items were the negotiation with the Sandy Spring Volunteer
20 Fire Department. They have reached out to us early in the
21 process and requested if we could accommodate them to allow
22 future expansion of their station, which we were happy to be
23 able to do so. And as part of this plan you will see
24 there's about 4,700 square feet of land adjoining that fire
25 station that we will be essentially donating as a result of

1 our subsequent process approvals to them to allow for the
2 expansion of that station. As a result, we were able to
3 obtain their support for the project and we worked very
4 diligently, as I alluded to before, with GOCA, Greater Olney
5 Civic Association, on this, as well as there are a number of
6 groups under that umbrella organization to obtain their
7 support for the project as well. They initially started out
8 somewhat in opposition and subsequently through the process
9 really worked with us and gave us what we are very proud of,
10 is a glowing letter of recommendation indicating we are sort
11 of the model for applicants to come as far as being able to
12 work with them, so very pleased that we were able to have
13 that result with them and with the community.

14 Just to -- and if I could now just take care of
15 those housekeeping items that I mentioned?

16 MS. ROBESON: Sure.

17 MS. WALKER: Almost everything is in the record
18 already. We did generate a few what I'll call demonstrative
19 exhibits that we thought would be helpful to sort of
20 synthesize the property a little bit more for you.

21 MS. ROBESON: Okay.

22 MS. WALKER: The first one is a black and white
23 drawing. This actually depicts the building on the subject
24 property and you'll see in highlight there are several
25 dimensions that are shown on there. Those dimensions are

1 various points along the building that show their
2 relationship to the lot line and we think that's really
3 helpful given the size of the building and the size of the
4 property to sort of synthesize it down in that fashion.

5 MS. ROBESON: Okay. So I will mark that as
6 Exhibit 29. And how would you describe this?

7 MS. WALKER: Actually, if we could mark that as
8 30? Maybe 29 could be the affidavit of posting from the
9 applicant.

10 (Exhibit No. 29 was marked for
11 identification.)

12 MS. ROBESON: Okay. If you could bring that up?

13 MS. WALKER: Yes.

14 MS. ROBESON: Okay.

15 MS. WALKER: I think if we could call 30 the
16 setback exhibit, I think that would -- building setback
17 exhibit.

18 MS. ROBESON: I'll just say plan showing building
19 setbacks.

20 (Exhibit No. 30 was marked for
21 identification.)

22 MS. WALKER: And then the next one that we have is
23 an aerial photograph of the property and it shows the
24 surrounding area. This will be referred to through the
25 testimony today.

1 MS. ROBESON: Okay. So that will be 31.

2 (Exhibit No. 31 was marked for
3 identification.)

4 MS. ROBESON: Would you kindly just write on the
5 bottom of that Exhibit 31? And that will be aerial photo
6 showing surrounding area, or just of neighborhood. I won't
7 get too technical.

8 MS. WALKER: Okay. And then the next one that I
9 have, this is actually a document that's in the record.
10 This is part of the Technical Staff's report. This is page
11 6 of her report and what we just did was to blow up the
12 image.

13 MS. ROBESON: Okay. Why don't we --

14 MS. WALKER: So I assume you want to put this
15 in --

16 MS. ROBESON: -- just --

17 MS. WALKER: -- as a new one or do you want me to
18 refer --

19 MS. ROBESON: Yes. Yes.

20 MS. WALKER: -- to it as 24?

21 MS. ROBESON: No, just if you could write 32 on it
22 and that is --

23 MS. WALKER: Sure.

24 MS. ROBESON: -- the surrounding area, the
25 surrounding area defined.

1 MS. WALKER: Technical Staff's neighborhood.

2 MS. ROBESON: Okay, Technical Staff.

3 (Exhibit No. 32 was marked for
4 identification.)

5 MS. WALKER: Okay. Two more. These are, again, I
6 think just to help facilitate the view ability, if you will,
7 of these documents. This document is the defined
8 neighborhood and surrounding area as our land planner has
9 defined the neighborhood, which will then be differentiated
10 from what's now Exhibit 32.

11 MS. ROBESON: Okay. So that can be 33,
12 applicant's definition of surrounding area.

13 (Exhibit No. 33 was marked for
14 identification.)

15 MS. WALKER: And the last one I have is, this is
16 actually, and I should say both of these are in the land
17 planning report that's been submitted by Rogers Consulting.
18 This one is a blow-up, again, of the neighborhood showing
19 where the existing approved special exceptions are. So
20 neighborhood delineation of special exceptions.

21 MS. ROBESON: Can you mark that as 34?

22 MS. WALKER: Yes.

23 (Exhibit No. 34 was marked for
24 identification.)

25 (Discussion off the record.)

1 MS. WALKER: At this time, I'm going to call my
2 land planner, Ms. Jennifer Russel. I'm just going to monkey
3 around with the exhibits for a minute and make sure you can
4 see them. This one is a little small but, yes.

5 MS. ROBESON: Oh, I can see that.

6 MS. WALKER: Can you?

7 MS. ROBESON: Yes.

8 MS. WALKER: That's pretty good.

9 (Discussion off the record.)

10 MS. ROBESON: Please raise your right hand.

11 (Witness sworn.)

12 BY MS. WALKER:

13 Q If you could please state your name, occupation
14 and business address for the record?

15 A Jennifer Russel, a land planner, 19847 Century
16 Boulevard, Suite 200, Germantown, Maryland 20874.

17 Q And have you previously testified before the
18 Zoning Hearing Examiner in Montgomery County as an expert in
19 land planning?

20 A I have.

21 Q How long have you been a practicing land planner?
22 She loves this question.

23 MS. ROBESON: Okay. Is her resume in the record?

24 MS. WALKER: Her resume is in the record, yes.

25 MS. ROBESON: Okay. And you've testified I know

1 before, well, correct me if I'm wrong. You've testified as
2 an expert before this agency and other agencies as an expert
3 in land planning --

4 THE WITNESS: Correct.

5 MS. ROBESON: -- correct?

6 THE WITNESS: Yes.

7 MS. ROBESON: And you are a licensed -- what, do
8 you have a license or --

9 THE WITNESS: I have a graduate degree in
10 planning, a master's in city and regional planning.

11 MS. ROBESON: Okay. So I'll accept her as an
12 expert in land planning.

13 THE WITNESS: So I don't have to say how long I've
14 been practicing?

15 MS. WALKER: I thought you would want to avoid
16 that question. As --

17 MS. ROBESON: Oh, I'm sorry. Well --

18 MS. WALKER: That's quite all right. As, I
19 apologize, Jennifer. As one additional item, we do have a
20 substitute special exception plan, page 2 of what's already
21 in the record. During the discussions with the Planning
22 Staff and in the review of their report, there was a
23 discrepancy in the number of parking spaces that were shown.
24 We were missing one space in the graphical delineation, but
25 it was correct in the chart. So we have a new special

1 exception plan that shows that additional space. So if we
2 could --

3 MS. ROBESON: Wait, I, okay. Let's mark it and
4 get it in.

5 MS. WALKER: Yes.

6 MS. ROBESON: So this is the revised special
7 exception plan?

8 MS. WALKER: This is special, only, the special
9 exception plan is, I believe, three pages. This is SE-2 is
10 this page of the plan.

11 MS. ROBESON: Is that sheet two?

12 MS. WALKER: Sheet 2 --

13 MS. ROBESON: Revised --

14 MS. WALKER: -- special exception.

15 MS. ROBESON: -- sheet 2 of SE plan.

16 MS. WALKER: That will be number --

17 MS. ROBESON: 35.

18 MS. WALKER: -- 35.

19 (Exhibit No. 35 was marked for
20 identification.)

21 MS. WALKER: I'm going to hand this to the Hearing
22 Examiner.

23 MS. ROBESON: Now I'm going to ask Ms. Russel to
24 just, you know, because you're not --

25 MS. WALKER: Sure. She'll lay the foundation for

1 the court.

2 MS. ROBESON: Okay. All right.

3 BY MS. WALKER:

4 Q Ms. Russel, are you familiar with the subject
5 property and the surrounding area?

6 A I am.

7 Q And have you visited the property and the
8 surrounding area?

9 A Several times, yes.

10 Q And did you prepare a land planning report and
11 related memoranda in connection with this application?

12 A I did. The planning report was prepared in June
13 2013 and subsequent memo to the staff was prepared in August
14 of 2013.

15 Q And just for the Hearing Examiner's record, those
16 are as Exhibit 25(k) and (i) in the record?

17 MS. ROBESON: Okay.

18 BY MS. WALKER:

19 Q If you could in a narrative fashion identify the
20 subject property and its surroundings for the Hearing
21 Examiner?

22 A I'm going to use Exhibit 33 which is so you can
23 see.

24 MS. ROBESON: I can.

25 THE WITNESS: Good. Okay. As long as I don't

1 knock it down. The subject property is outlined here in
2 gray and it's on the east side of Georgia Avenue, about
3 1,000 feet south of its intersection with Old Baltimore
4 Road. It's about -- it's adjacent to and north of the Sandy
5 Spring Fire Department 40, which is this small parcel just
6 adjacent, south of it. The site consists of 37.68 acres,
7 about 35.5 acres of existing forest are onsite at present
8 will be accessed off of Georgia Avenue.

9 In order to put the site into context with respect
10 to zoning and land use, I'll describe the surrounding land
11 uses and zoning for you. North of and adjacent to the site
12 is the historic, pre-civil war landmark, the Berry-Mackall
13 House. There's an existing home and some pertinences on the
14 site. It's on a 3.26-acre site. This whole, entire area
15 surrounding the site in this direction is all zoned RE-2.

16 MS. ROBESON: Now when you say this whole area,
17 you mean north --

18 THE WITNESS: North.

19 MS. ROBESON: -- and east?

20 THE WITNESS: Yes, north and east. And beyond to
21 the north and the east, this entire area is zoned RE-2 and
22 it characterized primarily by large lot, single-family homes
23 in a very pastoral kind of setting. RE-2 is a minimum 2-
24 acre lot size. And it's a very interesting, pastoral
25 setting just off of Georgia Avenue.

1 The southern boundary the site has characterized
2 continues with RE-2 zoning. There are vacant parcels here.
3 This parcel is owned by the First Baptist Church and is
4 zoned --

5 MS. ROBESON: Now when you say this parcel --

6 THE WITNESS: Parcel, parcel P-77. It is owned by
7 the First Baptist Church. It's zoned RNC. Parcel 71, T-40,
8 Parcel P-961 north of Emory Church Road are all zoned RE-2
9 and they are vacant. On the south side of Emory Church
10 Road, immediately adjacent and east of Georgia, are single-
11 family lots in the RE-2 zone and at the corner of Emory
12 Church and Georgia Avenue, Lot 1 is zoned RE-2. It's the
13 Oakdale Emory Church.

14 Moving to the other side of Georgia Avenue, the
15 west side, the area is primarily zoned R-200. The, along
16 Georgia Avenue there, with one exception of a small
17 commercial area that is zoned C-1 just north of Emory Church
18 Road. Also on this side on the west side of Georgia Avenue
19 are, it's a mélange of uses, including a special exception
20 granted last year, S-2719, directly across from the subject
21 site for a 64-bed domiciliary care home. There's an
22 existing daycare facility just south of the approved special
23 exception that was an old special exception that was
24 ultimately grandfathered in as a permitted use. And I will,
25 I'm going to review in subsequent testimony the location of

1 additional special exceptions, including the Verizon
2 building that is along Georgia Avenue on the west side.

3 MS. ROBESON: Oh, south of the --

4 THE WITNESS: Yes.

5 MS. ROBESON: -- south of the --

6 THE WITNESS: South of --

7 MS. ROBESON: -- daycare?

8 THE WITNESS: Yes. And then beyond this area
9 which you can see actually on Exhibit 32, the area is
10 characterized by R-200 residential development.

11 MS. ROBESON: And you're talking on the west side
12 of --

13 THE WITNESS: West side.

14 MS. ROBESON: -- of Georgia Avenue? Okay.

15 THE WITNESS: And that the area on the west side
16 of Georgia Avenue, the suburban development that's in the R-
17 200 zone is very different from the RE-2 development that's
18 on either side of Norbrook Road. In general, the single-
19 family housing in this area was built between 1950 and 1985.
20 It's a mix in terms of building materials of wood, siding
21 and brick. The homes are generally low-scale. They're one
22 or two-story suburban in nature. And the non-residential
23 uses along east, on either side of Georgia Avenue are varied
24 in terms of style and building materials. The fire
25 department, which is just south of and adjacent to our site

1 is a two-story, wood constructed building with a brick
2 facade.

3 The single-family units both in the RE-2 on the
4 east side of Georgia and the single-family units on the west
5 side all combine to use the services that line Georgia, the
6 non-residential services that line Georgia Avenue. That's
7 what gives you a picture of the community immediately
8 adjacent to the site.

9 BY MS. WALKER:

10 Q And I believe you already indicated the site is
11 RNC zoned?

12 A Yes.

13 Q Which is the rural neighborhood cluster zone?

14 A Correct.

15 Q And are you familiar with the purpose clause for
16 that zone?

17 A Yes. But just to let you know, just to remind you
18 that it was rezoned as part and parcel of the section map
19 amendment that implemented the Olney master plan in April of
20 2005. It was SMAG-838, rezoning as to the recommendation in
21 the master plan from RE-2 to the RNC. And I am familiar
22 with the --

23 Q Okay. If you could just --

24 A -- purpose.

25 Q -- in a narrative fashion discuss the salient

1 purposes of the purpose clause and how they apply here.

2 A The rural neighborhood cluster is very focused on
3 preserving open land and environmentally sensitive natural
4 resources. It also seeks to implement the recommendations
5 of the relevant master plan. Its purpose strongly
6 recommends the design, design guidelines for the cluster
7 where the master plan recommends. It's one of the zones
8 that is intimately tied to its designation in the master
9 plan.

10 Q And if you could describe with regard to our
11 property specifically the improvements, the physical
12 character if you will, site character, topography and so on?

13 A The, as I think you indicated previously, it has
14 the, the property has about 300 feet of frontage. It's
15 irregularly shaped. It's undeveloped. It has a vast
16 forested area which we're going to elaborate on in
17 subsequent testimony with 35.15 acres of forest on the site.
18 It's gently rolling. There's a high point of about, at 550,
19 which is just adjacent to the access onto Georgia Avenue
20 with a low point falling off at its southeastern corner of
21 462.

22 There are few limited areas of steep slope near
23 Georgia Avenue. There is an existing tree line that fronts
24 the property along Georgia Avenue and then there's a meadow,
25 an open area that falls back on the site until you get to

1 the forested area which makes a large portion of the site
2 and you'll see that in subsequent exhibits.

3 The building, which we're obviously going to
4 describe to you in great detail, is situated 300 feet back
5 from the road's right-of-way line. That, coupled with the
6 design of the building with a building frontage of 75 feet,
7 you will only be able to see the uppermost top of the
8 building from Georgia Avenue giving the grades and the
9 rolling topography and the landscaping. The existing tree
10 line and then subsequent, lush plantings that we're going to
11 elaborate on will barely give you a glance of the building
12 as you drive down Georgia Avenue. The forested area, which
13 we, our landscape architect is going to review, is located
14 within two stands. It's going to be -- there are about 115
15 trees on the site that qualify as specimen trees.

16 Q Well, I've just put up on the easel for your
17 reference what's now marked as Exhibit 35. Can you tell the
18 Hearing Examiner what this plan is?

19 A This is a special exception plan that accompanies
20 our request.

21 Q And is this -- how is this different from the plan
22 that was before the Planning Board a few weeks ago? Was
23 there a change in the number of parking spaces that's on
24 the, that's delineated on this plan?

25 A I have, there was a -- let's see. Was there a

1 reduction? No. There are 100 parking spaces on the site.

2 Q So this plan is only different from the sense that
3 it establishes one additional parking space than was
4 previously shown to Planning Staff, is that correct?

5 A Yes, that's correct.

6 Q Okay.

7 A 99.

8 MS. ROBESON: Well, wait a minute. I just, for
9 the record, I'm a little confused. You said, or I thought
10 you said that -- what is the change in showing the parking
11 space itself on the plan?

12 THE WITNESS: Correct.

13 MS. WALKER: Right. There were 99 --

14 MS. ROBESON: So you had the tab, tabular
15 calculations are the same?

16 MS. WALKER: Correct.

17 MS. ROBESON: This plan just shows the --

18 THE WITNESS: Correct.

19 MS. ROBESON: -- extra space? All right.

20 MS. WALKER: We only, we counted only 99 spaces --

21 MS. ROBESON: Okay.

22 MS. WALKER: -- at the time and --

23 THE WITNESS: Wanted to just make sure that the
24 plan was consistent with the chart that we're showing.

25 MS. ROBESON: With the -- okay. That's fine. I

1 just wanted to make sure I understood.

2 MS. WALKER: Yes, certainly.

3 MS. ROBESON: All right. Go ahead.

4 BY MS. WALKER:

5 Q Going back to the RNC purpose clause, do you feel
6 that the project meets these standards as you've described
7 them?

8 A Oh, absolutely.

9 Q And is this project being developed under a
10 standard or an optional method of development?

11 A Under the optional method.

12 Q And looking at the optional method, there's
13 criteria in 59-C-9.574 of the zoning ordinance. Do all of
14 those criteria apply or --

15 A No.

16 Q Okay. Could you please just briefly go through
17 those and discuss the ones that are applicable?

18 A Yes. The optional method criteria apply also to
19 residential. So the criteria that apply in this instance
20 include the minimum area of development which is 10 acres.
21 Obviously, our site is 37.6 acres. Minimum setback from the
22 street under the optional method is 15 feet. This building
23 is set back 307.6 feet from the future right-of-way line.

24 There's an additional caveat or recommendation in
25 the master plan that calls for a buffer for of at least 100

1 feet for properties along Georgia Avenue. So we are three
2 times the master plan recommendation, say nothing of way
3 beyond the 15 feet that's in the optional method.

4 With respect to yard requirements, the rear yard
5 requirement is not less than 30 feet. Our rear yard is
6 430.5 feet. As you can see from the exhibit that was
7 selected, which was Exhibit --

8 Q This is Exhibit 30.

9 A We are far in excess, side yards adjacent to a lot
10 that's not developed in the optional method which is the RE-
11 2, the side yards have to be, one side yard has to be 17
12 feet or a sum of 35 feet. Our smallest side yard is 106.11
13 feet. So we're far in excess.

14 In terms of maximum building height, we are at the
15 maximum building height of 35 feet. The maximum lot
16 coverage in the RNC zone is 10 percent. We are at 8
17 percent. And moving along in terms of the requirements,
18 lots, this portion of the ordinance suggests that lots
19 developed under the optional method must be connected to
20 community water and sewer system unless it can be
21 demonstrated at the time of subdivision that a limited
22 number of lots are on private well and septic within the
23 cluster will provide a more beneficial subdivision design
24 because of environmental or compatibility reasons. We are
25 going to elaborate on the water and sewer issue during

1 subsequent testimony.

2 There are also rural, open space design
3 guidelines. Rural, open space must comprise a contiguous
4 area. It has to be within a range of 65 to 85 percent. Our
5 plan proposes 84.69 percent, no problem there. And the
6 ordinance further suggests management and retention
7 perpetuity of the rural open space and the forest, all which
8 are going to be addressed by our landscape architect and
9 certainly are going to be adhered to.

10 We also are providing sufficient off-street
11 parking. We'll elaborate on parking later. And the
12 ordinance requires that a site plan be submitted and
13 approved under the optional method and we acknowledge that
14 is required and our intent to follow through.

15 Q Thank you. With an eye toward those RNC optional
16 method requirements, if you could please, using Exhibit 35
17 as applicable, describe the special exception that's been
18 requested?

19 A Okay. The site is being developed as an 107-bed -
20 -

21 MS. ROBESON: Bed or unit?

22 THE WITNESS: Yeah, sorry, unit. We have -- I
23 keep making that same mistake.

24 MS. ROBESON: And what's the difference, I guess,
25 is my -- I had a question.

1 THE WITNESS: Well --

2 MS. ROBESON: I don't understand.

3 THE WITNESS: Right. There's 107 units. The
4 total resident population is no more than 135 people which
5 85 people proposed in the assisted living portion and 50
6 within the specialty care. That's because you will have
7 units that could have more than one, a couple.

8 MS. ROBESON: Oh, okay.

9 THE WITNESS: Okay?

10 MS. ROBESON: In the assisted living?

11 THE WITNESS: Yeah.

12 MS. ROBESON: Okay. I understand. So unit is a
13 dwelling unit?

14 THE WITNESS: Is a dwelling unit --

15 MS. ROBESON: So the --

16 THE WITNESS: -- technically within -- yes.

17 MS. ROBESON: I don't know if it has a kitchen, so
18 I don't -- but what you're saying is --

19 THE WITNESS: Is that you can two people in one
20 unit --

21 MS. ROBESON: Yes, okay.

22 THE WITNESS: -- and that's what the -- but no
23 more than 135 people.

24 MS. ROBESON: And then the total population is
25 135?

1 THE WITNESS: Correct, 85 and 50.

2 MS. ROBESON: And does that include -- there are
3 no resident staff, correct, or not?

4 MS. WALKER: We'll actually address that through
5 the testimony of the applicant.

6 MS. ROBESON: Oh, okay. So the total population
7 is 135 --

8 THE WITNESS: 135, 107.

9 MS. ROBESON: -- The total units are --

10 THE WITNESS: 107.

11 MS. ROBESON: -- 107. All right.

12 THE WITNESS: And the plan is to construct a two-
13 story building totaling approximately 136,750 square feet
14 and 100 parking spaces. The facility is designed as a
15 connected scenario. The main building, which is the
16 assisted living building, is the building that's up front
17 near Georgia Avenue. It's set back with 300 feet. Its
18 parking, its first parking is 20-feet back from the building
19 itself. And it's connected to the critical care or
20 specialty care of the building which is more towards the
21 back by a covered walkway, in the exterior enclosed covered
22 walkway.

23 And as the attorney noted, the redesign to the
24 two-story facility from one-story created a lot of different
25 and interesting options for us to create a better plan on

1 the site.

2 BY MS. WALKER:

3 Q Are you familiar with the general standards for
4 the grant of a special exception in Montgomery County?

5 A I am.

6 Q And are you familiar with the special exception
7 standards for a domiciliary care facility and nursing home?

8 A I am.

9 Q If you could just briefly read into the record
10 what those definitions are for those uses?

11 A Okay.

12 "Domiciliary care home. A facility licensed,
13 funded, certified or registered by the state of
14 Maryland or the County which provides a protected
15 institutional or home-type environment and
16 maintains the necessary services for persons who
17 because of advanced age or disability requires a
18 supportive environment. The domiciliary care home
19 for not more than eight residents is a small group
20 home and a domiciliary care home for nine, but not
21 more than 16 residents, is a large group home for
22 zoning purposes. The number of residents include
23 members of the staff who reside at the group
24 home."

25 Q Just, I'm going to stop you there before you go on

1 to nursing home. In this application, is it correct that we
2 are a true domiciliary care home, not a group home, correct?

3 A Correct.

4 Q Okay. And if you could go on with the nursing
5 home?

6 A Nursing home.

7 MS. ROBESON: Well, you don't have to read it.

8 THE WITNESS: Okay.

9 MS. WALKER: Okay.

10 MS. ROBESON: Why don't we just --

11 THE WALKER: Know that it comes from 59-A-2.1?

12 MS. ROBESON: Yes, 2 point, yes, I have that.

13 MS. WALKER: It's in a new one.

14 MS. ROBESON: I have that and I have 2.37(g).

15 MS. WALKER: Right. As the applicable section.

16 THE WITNESS: Yes, the section.

17 MS. ROBESON: So if you just want to go through
18 those requirements rather than reading them, I think that
19 will speed things up a little bit.

20 MS. WALKER: Sure. Not a problem.

21 BY MS. WALKER:

22 Q And is a domiciliary care and a nursing home a
23 permitted use in the RNC zone by special exception?

24 A By special exception, yes.

25 Q Okay. And if you could identify the applicable

1 master plan for the subject property? I believe you said it
2 was the 2005 Olney master plan, is that --

3 A Right.

4 Q -- correct?

5 A Uh-huh.

6 Q And are there any site-specific recommendations in
7 that 2005 plan for the subject property?

8 A There is. The master plan makes a specific
9 recommendation that's related primarily to zoning for this
10 property. It's based upon a limited evaluation of the time
11 of the water and sewer situation. So, therefore, the
12 language reads, and I quote, "These properties," it's
13 grouped with two other properties that are, that were at the
14 time zoned RE-2 as well.

15 "These properties cannot be served by public sewer
16 through gravity. They are not recommended to be
17 in the public service envelope. Consistent with
18 other similar properties in the southeast
19 quadrant, they should be rezoned to RNC on septic
20 systems and community water."

21 But the primary impetus there is to rezone the
22 properties to the RNC zone from the RE-2.

23 Q And are there any guidelines for special
24 exceptions in this master plan, although they're not
25 properties listed as master plan specific?

1 A Yes, there are some very specific language in this
2 master plan. I thought it was kind of interesting actually
3 just because I think master plans are interesting in that it
4 did treat this issue of special exceptions quite seriously
5 and that's not that typical. Some master plans do, but this
6 master plan did and I think because of that it gave us very
7 good guidance as to how to design the site.

8 The language in the master plan initially says to
9 discourage special exception uses along Georgia Avenue
10 between Norbeck Road and the Town Center, which, of course,
11 is where this is located to preserve its low-density,
12 residential character. But we believe that the way the
13 building has been designed and its positioning on the site
14 is really focused on minimizing the impact to a passerby on
15 Georgia Avenue. The building, as you, which will be
16 elaborated upon by the architect in the subsequent
17 testimony, has a very classically proportioned facade and it
18 has, it is residentially styled with buildings and materials
19 that, of an upscale nature that blend in to the environment
20 and to the building materials that are used, that
21 characterize the community.

22 As we've indicated previously, you're going to
23 hear this, I guess, that the building is set back almost
24 three times the recommendation and twice the distance as the
25 adjacent uses to the north end to the south with a building

1 elevation that's set at a lower elevation fronting on
2 Georgia Avenue than the adjacent fire department, which is
3 located, you know, to its south.

4 The remaining portions of the property will be
5 very extensively buffered by a tree canopy courtesy of our
6 landscaping plan. And once again, of course, the redesign
7 from the one-story to the two-story, from the one-story
8 original submission allowed us to facilitate a greater
9 setback. The master plan also suggests, quote, to minimize
10 the negative impacts of special exception uses such as non-
11 residential character, visibility of parking lots, excessive
12 size, height and scale of buildings and intrusive lighting,
13 there's only a 75-foot building frontage, it's very narrow
14 at the front, there's no parking in the front between the
15 building and the street, so potential negative impacts are
16 minimized.

17 Additionally, the master plan is very specific.
18 It says to discourage special exception uses with excessive
19 impervious levels, the redesign of the site to a two-story
20 building created many advantages, the least of which was not
21 the reduction of impervious levels to approximately 10.85
22 percent from 13.2, a reduction of 2.35 percent. So we are
23 right on target with that particular master plan issue.

24 The master plan also has a, takes a larger view
25 and speaks to the protection of existing communities and

1 suggests that, quote, Georgia Avenue between Norbeck and 108
2 should have an open, semi-rural appearance to mark the
3 transition from the more densely populated areas which are
4 from the north. The landscaping plan, plus the siting of
5 the building and the narrow frontage of the building, the
6 lush landscaping that's set back from the dedicated right of
7 way will create that kind of environment. The master plan
8 also recommends a minimum, a 100-foot setback for any
9 dwelling or any other structure along the stretch should be
10 provided from the road right-of-way.

11 It also says, specifically, additional landscaping
12 and vegetation should also be used to make sure that main
13 views along the road are trees and vegetation and not houses
14 and other buildings. As you can see from Exhibit --

15 Q This is Exhibit 25(n)(ii).

16 A -- this is a view from the entryway from Georgia
17 Avenue right at the entryway and you can see that there's,
18 the landscaping and the setback from the street will create
19 a residential view.

20 Q If I could just also ask Ms. Russel to also look
21 at what's another exhibit, 25, just to give a different
22 perspective. This is a rendering that was done also of that
23 Georgia Avenue view --

24 A And this shows you truly --

25 Q -- at 25(n)(ii).

1 A And this shows you truly that you, if you're
2 driving by, you will see the rooftop given the --

3 MS. ROBESON: What, the grade, because the grade
4 and the landscaping --

5 THE WITNESS: Absolutely, and the setback.

6 MS. ROBESON: -- is that correct?

7 THE WITNESS: No parking in front.

8 MS. ROBESON: Okay.

9 THE WITNESS: A lot of features that seek to keep
10 it in concert with the master plan. There's also language
11 in the master plan that says any future special exceptions
12 should be landscaped such that they are not visible from the
13 road. And as manifested in that particular exhibit, the
14 horizontal landscaping, the road, I mean all of it combines
15 to, along with the terrain. So it basically obliterates
16 most of the building's facade on Georgia Avenue.

17 Additionally, the master plan, as I said, the
18 master plan is pretty extensive with respect to special
19 exceptions. It further elaborates and says, in particular,
20 lighting should be carefully considered to make sure no halo
21 effect or night glow is produced by excessive lighting. The
22 special exception lighting plan as submitted includes poles
23 at 12 feet with a fixture that brings the total height to
24 just under 15 feet, so in keeping with the lighting approach
25 that's more residential and minimizes the sizes of the

1 poles. I think you can see it's hidden.

2 Q I think --

3 A That's the bottom.

4 Q The bottom line, exactly. With regard to the
5 exhibits that I have posted, which is Exhibit 32 and 33, if
6 you could use these two? Please describe the boundaries of
7 the neighborhood in which the proposed special exception is
8 to be evaluated and discuss how your boundary differentiates
9 from the Park and Planning staff's boundary.

10 A You can see it, right?

11 Q Yes.

12 A Okay.

13 MS. ROBESON: Now you have to remind me, which one
14 is your boundary?

15 THE WITNESS: I'm going to do that.

16 MS. ROBESON: Okay.

17 THE WITNESS: The applicant's boundary is on the
18 smaller map.

19 MS. ROBESON: Which is Exhibit --

20 THE WITNESS: Exhibit 33. Our defined boundary
21 goes north to Old Baltimore Road -- I'm starting on the east
22 side of Georgia Avenue, north to Old Baltimore Road, comes
23 along the east on Norbrook Drive and south to Emory Church
24 Road. Going on the west side of Georgia Avenue, it
25 continues along Old Baltimore Road and delineates the rear

1 of properties which front on Georgia Avenue and goes again
2 to Emory Grove Road. It's a smaller neighborhood.

3 And it was our feeling, as I indicated previously,
4 that these are the, this is the area that melds and creates
5 activity and is focused on Georgia Avenue. This is a very
6 pastoral setting. It's more in keeping with the nature of
7 this site, the area beyond west of the western boundary is
8 more suburban and more intensely developed. That was
9 Exhibit 33.

10 Exhibit 32 shows you the larger boundary that was
11 defined by the Planning Board staff. If expanded, their
12 neighborhood on the east slightly, and really the only
13 differentiation on the east side is that whereas we use
14 Norbrook Drive as the limit, they use Norbrook Drive on
15 either side as the limit. This is not a significant
16 expansion.

17 And they went south of Emory Church Road. They,
18 on the west side they went to Old Baltimore Road to all the
19 residential development that goes beyond, that is off of Old
20 Baltimore Road and came down to Emory Lane. This is the
21 same neighborhood that was utilized for the previous special
22 exception for a domiciliary care facility that's directly
23 across from the other side of, on the west side of Georgia
24 Avenue from our subject site. And this was the neighborhood
25 that was used at the time of that a year ago, a little over

1 a year ago.

2 And I believe that the, going to Emory Lane was
3 because that was the nearest signalized intersection. Since
4 that time, eight or nine months ago, there's been the
5 installation of a signal at Emory Church Road here, which I
6 think almost validates our neighborhood. And I think the
7 same neighborhood was used.

8 MS. ROBESON: Okay. What difference does it make
9 which one I use? Does it make a difference?

10 THE WITNESS: I don't really think so. I mean I
11 think that our, our, I feel more comfortable with this
12 neighborhood because I think that if you visit the
13 community, you see here this is very different. However --

14 MS. ROBESON: I mean does the character --

15 THE WITNESS: -- we've done so much --

16 MS. ROBESON: -- of the -- does the character of
17 the neighborhood significantly change by the inclusion?
18 Aren't we trying to define the character of the neighborhood
19 and does it significantly change by including the --

20 THE WITNESS: No, I don't think that the impact of
21 the special exception -- I think that the impact of the
22 special exception to the neighborhood is minimal. So I
23 don't think it --

24 MS. ROBESON: She included -- where were your
25 traffic study intersections? Oh, well, you don't know that

1 or you may --

2 MS. WALKER: We're going to --

3 MS. ROBESON: -- not know that.

4 MS. WALKER: We'll cover that in subsequent
5 testimony.

6 MS. ROBESON: The, all I, the only reason I'm
7 saying that, and I've seen this before, that they'll, staff
8 will recommend the neighborhood include the intersections in
9 the traffic study. So I'm just -- I am -- so your position
10 is what, that when you look at -- neighborhood is defined by
11 direct impacts --

12 THE WITNESS: Uh-huh.

13 MS. ROBESON: -- or impacts?

14 THE WITNESS: I think that --

15 MS. ROBESON: So are you saying the west side is,
16 the impacts are too attenuated?

17 THE WITNESS: I think, I think, yeah, I think it's
18 far away and I think it's different.

19 MS. ROBESON: Well, it's defined technically by
20 impact. So --

21 THE WITNESS: I think the impacts of this use,
22 minimal as they may be --

23 MS. ROBESON: Yes.

24 THE WITNESS: -- are primarily on the east side of
25 Georgia Avenue.

1 MS. ROBESON: Do those properties on the west side
2 have access to Georgia?

3 THE WITNESS: Through Old Baltimore Road and
4 through the subdivision street. I mean here, this is all,
5 here's Old Baltimore Road, the intersection, and, you know,
6 it accesses the east and west side.

7 MS. ROBESON: Okay. So you go up to Old Baltimore
8 Road and then the other access is down at Emory Lane?

9 THE WITNESS: Correct. There's another access
10 here somewhat circuitous in the community adjacent to the --

11 MS. ROBESON: Oh, I see that.

12 THE WITNESS: -- commercial.

13 MS. ROBESON: Okay. All right. Okay.

14 BY MS. WALKER:

15 Q If you could also, Ms. Russel, I'm going to ask
16 you to refer to the exhibit that you had up there behind the
17 current board. I believe it's Exhibit --

18 A 34.

19 Q -- 34 that indicates -- if you could highlight for
20 the Zoning Hearing Examiner on that exhibit through your
21 testimony where the existing and still valid special
22 exceptions are within the vicinity of the subject property.

23 A We've identified four special exceptions. One is
24 the Olney Golf Park, which is on the, south of and adjacent
25 to the fire department site.

1 MS. ROBESON: Okay.

2 THE WITNESS: There's also on the west side of
3 Georgia Avenue, off of Old Baltimore Road, a long-standing
4 home occupation beauty parlor in a single-family home. Then
5 the other is the assisted living that was approved last
6 year. It's a 64-bed domiciliary care, S-2819, directly
7 across. It's under construction now. And there's also a
8 Verizon public utility building just north of the C-1
9 commercial small utility building, BAS-735/735A.

10 There's also a child daycare facility just
11 adjacent, south of the assisted living under construction.
12 It's an old special exception that was grandfathered and is
13 now used by right, so it's not a special --

14 MS. ROBESON: Okay.

15 THE WITNESS: -- exception any longer.

16 MS. ROBESON: All right.

17 BY MS. WALKER:

18 Q And looking at the special exceptions that
19 you've --

20 MS. ROBESON: Oh, okay. I'm sorry. I just got
21 that point. I understand. Okay. Go ahead.

22 MS. WALKER: That's a permitted use in the zone.

23 MS. ROBESON: Yes.

24 THE WITNESS: Yes, permitted.

25 MS. ROBESON: So the question is do you take it

1 into account --

2 THE WITNESS: Right.

3 MS. ROBESON: -- and you're saying no, because
4 it's now permitted.

5 THE WITNESS: It's considered a use.

6 MS. ROBESON: All right.

7 THE WITNESS: Right.

8 BY MS. WALKER:

9 Q Precisely. Reviewing the special exceptions
10 within the neighborhood that you've planned out, do you
11 think that approval of the special exception that we are
12 requesting increases the number, density or scope of special
13 exception uses to be inconsistent with the master plan?

14 A No, because I believe the way the site has been
15 designed and adherence to all the very specific
16 recommendations in the master plan, I think we've done a
17 very good job of minimizing its intrusion into the
18 community.

19 Q And do you think it will adversely affect the
20 residential nature of the area?

21 A No, I do not.

22 Q In your opinion, do you think that the proposed
23 facility would be detrimental to the use, peaceful
24 enjoyment, economic value or development of the surrounding
25 property or the general neighborhood irrespective of that,

1 if that use were established elsewhere?

2 A I don't believe it's going to be detrimental to
3 the use of the surrounding properties. The building is set
4 back almost twice the distance of the adjacent land uses
5 both to the north and the south. It has a single entrance
6 that provides connection to Georgia Avenue. They're going
7 to, as you will see when we elaborate on the landscape plan,
8 they are going to be trees lining each side of the entrance
9 drive. The portions of the project that extend into the
10 existing tree canopy are going to be graded to minimize tree
11 loss. There's going to be a wooded buffer on each side of
12 the site to minimize the impact on both north and south of
13 the site.

14 Q And I believe you've already included it in your
15 testimony, but do you believe that this application as
16 presented meets the development standards that are set forth
17 in the RNC zoning as highlighted previously?

18 A Yes, I do.

19 Q And do you believe that the special exception
20 would adversely affect the health, safety, morals or general
21 welfare of any residents, visitors or workers in the area at
22 the subject site irrespective of any adverse effect that use
23 might have if established elsewhere in the zone?

24 A I don't think it has any potential to adversely
25 health, safety, security, morals or general welfare. And,

1 in fact, I think it's, I think has an interesting aspect
2 because it's going to actually provide an opportunity to
3 enhance services for residents, visitors and family members
4 who can enjoy the advantage of having a use like this in
5 their community. We have information in our report, and I
6 just would basically like to elaborate for a moment about
7 it, given the fact that the senior population in Montgomery
8 County has grown steadily, there's been a 35 percent, 34
9 percent increase in the number of residents 65 years and
10 older over the, recently, in the years between 2010 and
11 2020, it is expected to increase by more than 54,000 people.

12 By 2030, omni five and above, which is a
13 population that could seek residence here, is projected to
14 increase by 38 percent. The County Council recently passed
15 the housing element of the master plan, of the general plan
16 in April of 2011, and they reconfirmed a policy that seeks
17 to make it easier for seniors to age in place and age in the
18 community within which they live. And we affirmed it
19 actually as a land use goal, to allow the elderly to remain
20 in their community because oftentimes that's a signal or it
21 generally translates into remaining healthier longer if you
22 stay in the community in which you, in which you were
23 living.

24 And, additionally, the master plan, once again,
25 makes a statement about that and affirms the need to, quote,

1 support elderly housing projects of appropriate densities at
2 appropriate locations within the master plan geographic
3 area. Additionally, as I'm sure our traffic expert will
4 elaborate, this kind of use has minimal peak hour traffic
5 impact. It's -- the residents are very site-oriented and it
6 validates the need for the pedestrian network, which we'll
7 elaborate on and we'll show you the landscape plan. And we
8 have a series of, paths of open spaces that surround the two
9 buildings that take advantage of the heavily forested area.

10 Q Thank you. Looking now to the specific
11 requirements for the zoning ordinance in the special
12 exception standards for a nursing home and domiciliary care,
13 if you could describe what these standards are and how this
14 application meets them?

15 A Okay.

16 Q Again, looking at 59-G-2.37 --

17 A Okay.

18 Q -- in the ordinance.

19 A The use will not adversely affect the present
20 character of future development surrounding residential
21 community due to bulk, traffic noise or a number of
22 residents. We believe that it will not adversely affect the
23 character or development of the residential community, the
24 plans incorporated and a wide variety of architectural
25 landscaping, site grading, environmental elements that will

1 really maintain its residential nature.

2 The use will be housed in buildings that are
3 architecturally compatible with other buildings in
4 surrounding areas. You'll see, the architect will
5 elaborate, but the architecture has been developed in order
6 to maintain a residential appearance. Its setting on the
7 site minimizes the building's exposure to outside
8 properties. The setback to Georgia Avenue, there are no
9 long, unobstructed views of the building. The short end of
10 the building is up front. The grading minimizes the full
11 two-story building height and the landscaping is going to
12 provide interrupted views into the site as you saw from the
13 exhibits. And it will create really a residential edge for
14 the site. The use will be adequately protected from noise,
15 air pollution and other potential dangers to the residents.
16 The building setback is 300 feet from Georgia Avenue, which
17 provides more than a sufficient buffer.

18 Then, additionally in terms of following
19 requirements for domiciliary care homes for more than 16
20 residents, the minimum lot area has to be five acres. We,
21 of course, are at 37.68. Our minimum yards are well in
22 excess, as I think I elaborated previously, the side yards
23 are, the closest side yard is 106 feet. In terms of maximum
24 coverage, minimum lot frontage, minimum green area, minimum
25 front and rear yards and maximum height, the proposal more

1 than meets the development requirements in the RNC zone.
2 The maximum lot coverage is 10 percent. We are at 8
3 percent. Minimum lot width is 25 feet. We're at 305. Open
4 space requirement is 65 percent. We are at 84.69 percent.
5 The front and rear yards are way in excess of the 40 and 35
6 foot required. 307 and 430 is our rear yard and we are at
7 the 35-foot building height maximum.

8 In terms of off-street parking, we provide one
9 space, we're in concert with the one space for every four
10 beds and one space for each of the two employees. Our
11 subject site will have 100 parking spaces onsite. We are
12 required to submit a site plan and the special exception
13 site plan accompanies the application. That's pretty much
14 it.

15 Q And just to be clear, is the applicant requesting
16 any waivers for parking or anything else as part of this
17 application?

18 A No, they are not.

19 Q And I presume you've had the opportunity to review
20 the Technical Staff Report that was submitted to the Park
21 and Planning Commission in their review of this matter?

22 A I did.

23 Q And with regard to those recommendations, are the
24 conditions of approval as elaborated on by the Planning
25 Board during their proceedings, do you feel appropriate in

1 light of this application?

2 A Absolutely.

3 Q And in your opinion as both the land planner and
4 expert witness, do you believe the approval of the special
5 exception will comply with all of the zoning ordinance
6 requirements and be consistent with the master plan?

7 A Absolutely and then some.

8 MS. WALKER: That's all I have for this witness.

9 MS. ROBESON: I just have one question, but maybe
10 you're going to have someone else address it. One of the
11 requirements, the special standards are that you have to
12 show any expansion.

13 THE WITNESS: We have no plans for expansion.

14 MS. ROBESON: Okay. That's --

15 THE WITNESS: So we have not submitted an
16 expansion plan.

17 MS. ROBESON: Okay. All right. Thank you very
18 much.

19 THE WITNESS: You're welcome.

20 MS. WALKER: Thank you.

21 THE WITNESS: Uh-huh.

22 MS. WALKER: If we could, we'd like to move on to
23 our next witness, which is Hannah Murray.

24 MS. ROBESON: Okay.

25 MS. WALKER: I'm just going to take a moment if I

1 could to get her exhibits together for her.

2 MS. ROBESON: Sure.

3 (Discussion off the record.)

4 MS. ROBESON: While she's doing that, can you
5 raise your right hand?

6 MS. MURRAY: Certainly.

7 (Witness sworn.)

8 MS. ROBESON: Okay. And we will wait.

9 DIRECT EXAMINATION

10 BY MS. WALKER:

11 Q If you could, please state your name, occupation
12 and business address for the record.

13 A Hannah Murray. I'm an environmental planner and
14 landscape architect and I work at 19847 Century Boulevard,
15 Suite 200, Germantown 20874.

16 Q And for the Hearing Examiner's knowledge and
17 information, we did submit Ms. Murray's resume into the
18 record as part of our statement of operations and supporting
19 materials.

20 MS. ROBESON: Okay.

21 MS. WALKER: Ms. Murray is not previously
22 qualified before the Hearing Examiner for Montgomery County
23 as an expert, so if I could just ask her a few qualifying
24 questions?

25 MS. ROBESON: Yes. Go ahead. I'm sorry, she's an

1 environmental --

2 MS. WALKER: Environmental planner and landscape
3 architect.

4 THE WITNESS: Landscape architect.

5 MS. ROBESON: Okay. That's -- I wasn't sure what
6 the second -- okay. Go ahead.

7 BY MS. WALKER:

8 Q Okay. If you could please elaborate for the
9 Hearing Examiner, how long have you been a practicing
10 landscape architect?

11 A Nine years.

12 Q And if you could describe your educational
13 background?

14 A I have a bachelor of landscape architecture from
15 the University of Maryland.

16 Q And do you hold any certifications related to your
17 occupation?

18 A I'm a professional landscape architect in the
19 state of Maryland and I'm a lead accredited professional
20 with a specialty in neighborhood design.

21 Q Okay. And are you familiar with the Montgomery
22 County regulations, including the zoning ordinance?

23 A Yes.

24 Q And are you familiar with the standards required
25 for approval of special exceptions in the County as they

1 relate to your specialty?

2 A Yes.

3 Q Okay. And have you previously testified before
4 other government bodies such as Board of Appeals or Planning
5 Commissions as an expert previously?

6 A Yes, in several jurisdictions.

7 MS. WALKER: Okay. I'd like to, referring to Ms.
8 Murray's resume, which is already in evidence, move that she
9 be admitted as an expert in landscape architecture and
10 environmental planning.

11 MS. ROBESON: She's admitted as an expert. You
12 have another notch on your resume.

13 THE WITNESS: Yes.

14 MS. WALKER: Congratulations.

15 MS. ROBESON: Go ahead.

16 BY MS. WALKER:

17 Q Is it safe to say that you're familiar with the
18 subject property and the surrounding area?

19 A Yes.

20 Q And have you visited the site as well as the
21 surrounding area?

22 A Yes.

23 Q Okay. And did you participate in the preparation
24 and review the Forest Conservation Plan and landscape plan
25 for the subject property?

1 A Yes, I was on the preparation team and I reviewed
2 them.

3 Q Okay. And are you familiar with the forest
4 conservation law, Chapter 22(a) of the Montgomery County
5 Code?

6 A Yes.

7 Q Okay.

8 A In a nutshell, any property that's larger than
9 40,000 square feet and is seeking approval for a sediment
10 control permit, a special exception or one of several
11 development plans such as a site plan are subject to the
12 forest conservation law.

13 MS. WALKER: I'm looking at my exhibits here.
14 Thank you. Just for the record, Ms. Murray is going to
15 refer during her testimony to the special exception
16 landscape plan which she just testified that she
17 participated in the preparation of that. That is Exhibit
18 25(c). And she's also going to refer to the Forest
19 Conservation Plan which she also participated in the
20 preparation of and that's Exhibit --

21 MS. ROBESON: Is that the preliminary forest
22 conservation --

23 MS. WALKER: Correct.

24 THE WITNESS: Yes, preliminary Forest Conservation
25 Plan, which is shown in the record as Exhibit 25(e).

1 BY MS. WALKER:

2 Q And were you present during the September 19th
3 hearing at the Planning Board where the Forest Conservation
4 Plan that you participated in was reviewed?

5 A Yes.

6 Q And have you reviewed the Technical Staff Report,
7 which is Exhibit 24 by Mary Jo Kishter (phonetic sp.) as it
8 relates to the Forest Conservation Plan?

9 A Yes.

10 Q And do you agree with the contents or have any
11 comments on her report?

12 A I thought it was a good report, yes.

13 Q Okay.

14 A I agree with it.

15 Q And if you could just summarize for the Zoning
16 Hearing Examiner the overall Forest Conservation Plan
17 details, including the onsite forest retention and the
18 applicable thresholds under the County and state law?

19 A Sure. I'll start with the County-wide general
20 overview forest conservation 101 and then go to the
21 specifics of this plan. Are you 101'd out?

22 MS. ROBESON: Why don't you go to the specifics?
23 It would be helpful if you go to the specifics of the plan.

24 THE WITNESS: Fair enough.

25 MS. ROBESON: If I feel like there's something

1 that needs to be in there for the record, I'll ask you for
2 it, okay?

3 THE WITNESS: That sounds great.

4 MS. WALKER: Okay.

5 THE WITNESS: So the forest conservation worksheet
6 for this particular plan because it's, there's so much
7 forest, we can ignore any aforestation requirements. So we
8 would only be concerned with reforestation requirements.

9 MS. ROBESON: Okay.

10 THE WITNESS: The reforestation threshold for this
11 particular project is 7.59 acres. There's also what they
12 call a breaking point, which is kind of a sweet spot where
13 you can clear down to that point, but you don't owe any
14 planting --

15 MS. ROBESON: Right.

16 THE WITNESS: -- because, yeah, you --

17 MS. ROBESON: No, no, keep -- explain that.

18 THE WITNESS: Okay.

19 MS. ROBESON: Go ahead, Ms. Murray.

20 THE WITNESS: It's a sweet spot because you can
21 clear it down to that point because the mitigation you would
22 owe for clearing forest above it is cancelled out by the
23 area you're saving above your threshold.

24 MS. ROBESON: Okay.

25 THE WITNESS: So the sweet spot for this project

1 is 13.1 acres.

2 MS. ROBESON: Okay.

3 THE WITNESS: We are proposing to retain 27.23
4 acres, so well above the sweet spot. So there's no planting
5 requirement for this plan.

6 The only other quirk which, I guess, is specific,
7 the project area is 37.68 acres, but you have to add to your
8 tract area any disturbance offsite. So for the improvements
9 along Georgia Avenue, which are outside of the boundary, you
10 have to add that to the tract area. So you get, for forest
11 conservation a tract area of 37.96 acres.

12 MS. ROBESON: Okay.

13 THE WITNESS: That's the -- and then the
14 preliminary Forest Conservation Plan was reviewed and
15 approved at the Planning Board on September --

16 MS. ROBESON: Right.

17 THE WITNESS: -- 19th and we actually just got the
18 resolution, which is great, and then --

19 MS. ROBESON: Yes.

20 THE WITNESS: -- the next step for this project
21 will be a final Forest Conservation Plan which will happen
22 along with the site plan. So the final forest --

23 MS. ROBESON: Okay.

24 THE WITNESS: -- conservation plan has additional
25 construction details.

1 MS. ROBESON: Do you want to address the variance?

2 THE WITNESS: The variance for this project
3 includes 21 trees. It will be the removal of two trees and
4 my --

5 MS. ROBESON: Two specimen trees onsite?

6 THE WITNESS: That's correct.

7 MS. ROBESON: Okay. Go ahead.

8 THE WITNESS: It will be the removal of two
9 specimen trees onsite of, I think, 115 specimen trees on the
10 site.

11 MS. ROBESON: Yes.

12 THE WITNESS: And in Montgomery County, you must
13 include, if you're impacting what they call a critical root
14 zone in any way, you have to include it, so there are 19
15 trees which are impacted to a lesser degree and not proposed
16 for removal.

17 MS. ROBESON: And what are the critical root zone
18 impacts, are they all under like -- these are, some of these
19 are offsite trees, right?

20 THE WITNESS: Correct.

21 MS. ROBESON: Can you go into that a little bit?

22 MS. WALKER: Yes, actually, I'll just take a
23 moment to put up the tree variance plan.

24 MS. ROBESON: And are you below 30 percent
25 critical root zone impacts on those trees?

1 THE WITNESS: With one exception, which I will get
2 into. So in this --

3 MS. ROBESON: Okay.

4 THE WITNESS: -- the adjacent property is historic
5 and --

6 MS. ROBESON: Yes.

7 THE WITNESS: -- because there are special
8 provisions in the variance for historic property, so they
9 went out --

10 MS. ROBESON: Yes.

11 THE WITNESS: -- and did a one tree survey.

12 MS. ROBESON: Okay.

13 THE WITNESS: And so there are eight trees on the
14 historic property which we had to include, even though they
15 were much smaller. So there's one tree which is a 7-inch
16 Mulberry, which is not a native tree anyway, so we sort of
17 frown upon those to start with. The root impact of that is
18 39.6 percent, but we didn't technically count it as removed
19 because smaller trees are able to deal with impact better
20 than larger trees.

21 MS. WALKER: If I could, Ms. Murray is going to
22 refer to Exhibit 25(f), which is the tree variance plan in
23 the record.

24 MS. ROBESON: Okay. Thank you. And Technical
25 Staff accepted that, correct?

1 THE WITNESS: Yes. They supported the variance
2 and the Planning Board approved it. Do you still want me to
3 point at the plan or are you content or --

4 MS. ROBESON: Well, I'm thinking of the Board of
5 Appeals. So why don't you go through the variance
6 requirement or why don't you go through the variance plan --

7 THE WITNESS: Sure.

8 MS. ROBESON: -- it that's okay?

9 THE WITNESS: Sure. So kind of categorically,
10 there are two trees near Georgia, 136 and 137. They are
11 impacted due to the entrance.

12 MS. ROBESON: Okay.

13 THE WITNESS: The existing curb cut somewhat
14 dictates the location of the entrance site distance, which
15 the traffic engineer can get into. And then also if the
16 entrance had been pushed further south, it would be
17 increased impervious area, which is obviously a negative.
18 So those trees are impacted for that reason, not proposed
19 for removal.

20 Moving along the entrance drive, there are the
21 trees. I know I have to look in H, I think, but they are
22 No. 65, 64, 61, 50, 48, 30, 28 and 24. These are mostly the
23 little guys. They have impacts. None are proposed for
24 removal. Sort of at this pinch point in the northeast
25 corner, there's a pinch point just due to the property

1 configuration where the drive aisle is closed and the storm
2 water facility is, make it so that we could not move the LOD
3 further away from those trees. So there's one tree --

4 MS. ROBESON: And the LOD is the limits of
5 disturbance?

6 THE WITNESS: Correct.

7 MS. ROBESON: Okay.

8 THE WITNESS: Tree No. 212 is proposed for removal
9 in this area, which is on the property. And then I won't go
10 into the numbers, the adjacent trees, trees on the adjacent
11 property are proposed for impact, but not removal, a lesser
12 impact than 33 percent.

13 MS. ROBESON: Okay.

14 THE WITNESS: And then along the property line
15 with the fire station, there are three trees proposed for
16 impact, but not removal. And tree No. 5 is proposed for
17 removal and it's just in another unfortunate spot where the
18 ring road was eliminated to reduce impervious --

19 MS. ROBESON: That's right, impervious area.

20 THE WITNESS: But in doing so, tractor trailer
21 turnaround is required there --

22 MS. ROBESON: Okay.

23 THE WITNESS: -- and that gets pretty close to the
24 property line and into the critical root zone and then
25 there's a micro-bio facility that's there --

1 MS. ROBESON: Okay.

2 THE WITNESS: -- so the grading for that
3 necessitates the removal of tree No. 5.

4 MS. ROBESON: Okay.

5 MS. WALKER: Thank you. Turning away now from the
6 Forest Conservation Plan and the tree variance, which were
7 approved at the Planning Board --

8 MS. ROBESON: Right.

9 MS. WALKER: -- if you could look now to the
10 landscape plan --

11 MS. ROBESON: Okay. Thank you.

12 MS. WALKER: -- for the property?

13 (Discussion off the record.)

14 BY MS. WALKER:

15 Q Looking now at the landscape plan that I believe
16 you already testified to that you participated in the
17 preparation of --

18 MS. ROBESON: And that is exhibit?

19 THE WITNESS: 25(c).

20 MS. WALKER: 25(c) --

21 MS. ROBESON: Okay.

22 MS. WALKER: -- in the plan, yes.

23 MS. ROBESON: Okay. Go ahead.

24 BY MS. WALKER:

25 Q Turning now to Exhibit 25(c), are you familiar

1 with the zoning ordinance requirements for a rural open
2 space as it relates to the RNC zone?

3 A Yes. The rural open space per the RNC is land
4 that's managed for environmental benefits such as
5 reforestation or stream restoration, or it can be left
6 untouched. And that land is adjacent to the cluster
7 neighborhood. Rural open space can be used to preserve
8 natural resources as it will be in this particular case.

9 Q Okay. And with regard to natural resources, are
10 there wetlands on this property? Could you just generally
11 walk us through what are those natural features --

12 A Yeah.

13 Q -- that we're designing around?

14 A So obviously this site contains significant
15 forest, ad nauseum. There are two stream tributaries, one,
16 both in the eastern two-third of the property heading north
17 to south and then another that joins in west to east.

18 MS. ROBESON: And they're marked on, they're shown
19 on Exhibit --

20 THE WITNESS: 25(e) --

21 MS. ROBESON: Okay.

22 THE WITNESS: -- which is the Forest Conservation
23 Plan. And then it should be noted that the higher
24 concentration of significant and specimen trees is also in
25 this, our eastern and southern portion. And then from the

1 top of the southern stream channel there's a significant
2 pocket of forested dwellings that jumps up into the site.
3 That's over an acre of pocket, of forested dwellings.

4 BY MS. WALKER:

5 Q While you're up there --

6 A Yes.

7 Q -- too, if I could just ask that you, turning to
8 the landscape plan, just walk us through the proposed
9 landscaping for the site.

10 A Sure. There's significant buffering along Georgia
11 Avenue as we discussed the evergreens, shrubs, the whole
12 sort of spectrum to buffer along Georgia Avenue. There's
13 additional buffering along fire station property and then
14 the landscape plan also serves sort of an ecological benefit
15 of all the street trees or street trees are along the drive
16 aisles which help to combat the urban heat and island
17 effect. They shade the black asphalt so it doesn't heat up
18 as much.

19 MS. ROBESON: So it meets the Park and Planning
20 standards for shading the parking lots or parking?

21 MS. WALKER: The canopy coverage --

22 MS. ROBESON: Yes.

23 MS. WALKER: -- requirements. Does it meet that?

24 THE WITNESS: Canopy coverage requirement for
25 forest conservation. I believe there are requirements for

1 green space within parking areas, it may meet that.

2 MS. ROBESON: Okay.

3 THE WITNESS: Yes.

4 MS. WALKER: That's actually all that we have for
5 Ms. Murray. If the Hearing Examiner has any further
6 questions?

7 MS. ROBESON: I don't. Thank you very much.

8 THE WITNESS: Thank you.

9 MS. WALKER: And next, moving on through, will
10 actually be our traffic engineer, Mike Lenhart.

11 (Discussion off the record.)

12 MS. ROBESON: While she's doing that, would you
13 raise your right hand?

14 (Witness sworn.)

15 MS. ROBESON: Thank you.

16 MS. WALKER: I'm just putting it up for Mr.
17 Lenhart's ease and reference, Exhibit 31, which is the
18 aerial imagery of the overall vicinity of the property.

19 DIRECT EXAMINATION

20 BY MS. WALKER:

21 Q For the record, if you could please state your
22 name, occupation and business address?

23 A Yes. My name is Michael Lenhart with Lenhart
24 Traffic Consulting at 331 Redwood Grove Court, Millersville,
25 Maryland 21108.

1 Q Thank you. And have you previously testified
2 before the Zoning Hearing Examiner in Montgomery County as
3 an expert in --

4 A Yes.

5 Q -- traffic and transportation planning?

6 A Yes, numerous occasions.

7 Q Okay.

8 MS. ROBESON: Okay. Are you a civil engineer or a
9 transportation planner?

10 THE WITNESS: A traffic engineer and
11 transportation planner. I have a master's degree from
12 Maryland in traffic engineering and transportation planning,
13 registered --

14 MS. ROBESON: Okay.

15 THE WITNESS: -- professional engineer.

16 MS. ROBESON: Okay. All right. So we'll qualify
17 him as an expert in traffic engineering and transportation
18 planning.

19 THE WITNESS: Thank you.

20 MS. WALKER: Excellent. And just for your
21 reference, his resume is already in the record.

22 MS. ROBESON: Okay. Thank you.

23 BY MS. WALKER:

24 Q Suffice it to say, you're familiar with the
25 subject property and the surrounding road network?

1 A Yes.

2 Q Okay. And you have visited the site as well?

3 A Numerous occasions.

4 Q Okay. And have you prepared a traffic statement
5 in connection with this?

6 A Yes, I have.

7 Q Okay. And was that statement reviewed and
8 approved by the Park and Planning Commission and their
9 staff?

10 A Yes, it was. Mr. Kee Kim (phonetic sp.) at
11 Transportation Planning.

12 Q Okay. And if you could just briefly describe how
13 does a traffic statement differ from a traffic study?

14 A A traffic statement is kind of like an umbrella
15 report. A traffic study is a component of the traffic
16 statement. So a traffic study would be an informal term for
17 a local area transportation review. A traffic statement has
18 the two components, the local area transportation review and
19 a transportation policy area review. And so the traffic
20 statement looks at both of those component and determines
21 whether they're either exempt from one or other, or
22 applicable for study.

23 Q Okay. I'm going to ask now that you refer to
24 Exhibit 31 that I put up, which is the aerial imagery. If
25 you could identify and describe the surrounding road

1 networks and their critical intersections that would
2 generate, site generate traffic would be funneled through
3 these?

4 A Yes. The site is located on the east side of
5 Georgia Avenue to the north of Emory Church Road and the
6 south of Old Baltimore Road. The site has right in, right
7 out access, again, on the east side of Georgia Avenue just
8 north, several hundred feet north of the volunteer fire
9 station. Georgia Avenue is a divided highway, 4-lane,
10 divided highway and there are crossovers at the existing
11 fire station that would serve U-turn traffic to get to the
12 site from the north. And there is a crossover at Georgia
13 Avenue and Old Baltimore Road that serves U-turn movements
14 for site traffic to get back to the south.

15 Q And if you could, just to close the loop on the
16 question that the Hearing Examiner had asked earlier with
17 regard to the neighborhood for the special exception
18 approval across the street from us, the Olney Assisted
19 Living Partners --

20 A Yes.

21 Q -- were you the traffic engineer for that project?

22 A Yes, I was.

23 Q Okay. So you are familiar with that project as
24 well as the --

25 A Yes.

1 Q -- requirements in the neighborhood?

2 A Yes.

3 Q Okay. Just, if you could briefly explain the
4 signalized intersections and how if that study were done
5 today how it might differ based upon the addition of
6 signalized intersections?

7 A Right. When the Olney Assisted Partners went
8 through the process, the signal at Georgia Avenue and Emory
9 Church Road was not yet installed. And so the next signal
10 to the south was Georgia Avenue at Emory Lane and it's
11 likely that that's how they established the transportation
12 area, although a traffic study was not required for that
13 either, it's likely that's how they, how we put together the
14 neighborhood boundaries within the past year roughly signals
15 installed at the Emory Church Road intersection.

16 Q Okay.

17 A So that's the next signal to the south.

18 Q Okay. And are you familiar with the Olney master
19 plan as result of your experience in these projects?

20 A Yes.

21 Q And are there any transportation recommendations
22 that relate to the subject property?

23 A No, nothing that relates to the property. The
24 2005 master plan identifies Georgia Avenue as M-8 and its
25 150-foot right-of-way with a 4-lane, divided roadway through

1 this section which is built to the master plan standards.

2 Q And the master plan right-of-way width for Georgia
3 Avenue in the vicinity of the subject property is what?

4 A 150.

5 Q 150. Okay. And the applicable, just turning now
6 to the growth policy, is that something that the Planning
7 Board looks at not or at the time of preliminary planning?

8 A It's, the subdivision staging policy is what's
9 taken effect and that would be done at the time of
10 preliminary plan of subdivision, but you use the same
11 guidelines as you go through special exceptions and evaluate
12 impacts.

13 Q Okay. And this project will also be subject to
14 your preliminary plan and a site plan, correct, so they will
15 revisit that issue at that time?

16 A Correct.

17 Q Okay.

18 MS. ROBESON: Do you want to just briefly address
19 the TPAR test?

20 THE WITNESS: Certainly. And --

21 MS. WALKER: That's my next question.

22 MS. ROBESON: Oh, I'm sorry.

23 THE WITNESS: Perfect timing. So the TPAR,
24 Transportation Policy Area Review, looks at two components.
25 One is roadway adequacy and one is transit adequacy in each

1 policy area. This is the only policy area, is, was found to
2 be adequate under roadway adequacy, inadequate for transit.
3 As part of the County code requires that you make a finding
4 that either all facilities are adequate or they're going to
5 be made adequate either through private or public funding,
6 or the applicant can make a traffic mitigation payment to go
7 toward area-wide transportation improvements within that
8 policy area. And because there's an inadequacy in transit,
9 there would be a 25 percent traffic impact tax that would be
10 a traffic mitigation payment toward those services.

11 MS. ROBESON: And the applicant is willing to make
12 that payment?

13 THE WITNESS: Yes.

14 MS. WALKER: Thank you.

15 MS. ROBESON: And I, just back to -- can I ask you
16 one more question? I'm jumping subjects a little bit, but
17 back to the intersections, were you to do a full traffic
18 study for this site under the LATR guidelines, what would be
19 the intersections that would be studied?

20 THE WITNESS: If we had to do an LATR traffic
21 study and those are required if you generate 30 or more peak
22 hour --

23 MS. ROBESON: Right.

24 THE WITNESS: -- trips, we would study Georgia
25 Avenue at Emory Church, because that's the first signal to

1 our south --

2 MS. ROBESON: Correct.

3 THE WITNESS: -- and Georgia Avenue at Old
4 Baltimore Road, which is --

5 MS. ROBESON: Okay.

6 THE WITNESS: -- the first signal to the north.

7 MS. ROBESON: Okay. Thank you. I'm sorry to
8 interrupt.

9 MS. WALKER: No.

10 MS. ROBESON: Go ahead.

11 MS. WALKER: That's fine.

12 BY MS. WALKER:

13 Q Are you familiar with the operational
14 characteristics of the proposed special exception uses?

15 A Yes.

16 Q Okay. And are you aware of what the maximum
17 number of staffing will be --

18 A Yes.

19 Q -- that will be present on the site is?

20 A Staffing at 100 max, 100 staff with a max of 50 at
21 any given time also.

22 Q Okay. And have you had a chance to review the
23 trip generation rates for such a proposed facility?

24 A Yes.

25 Q Okay. If you can just highlight for the Hearing

1 Examiner sort of the high points of the traffic statement
2 that you've already prepared?

3 A Sure. So initially as we work with Kee Kim, a
4 transportation planner at Park and Planning, Park and
5 Planning has trip generation rates for assisted living
6 facilities. They're based on, it generates in the morning
7 peak hour of .03 trips per unit in the morning; .06 trips
8 per unit in the evening, so it's 107 units that would round
9 to four trips in the morning peak hour and seven trips in
10 the evening peak hour. That coincides with staff findings
11 in the staff report. Mr. Kim also asked us to take a look
12 at a staffing summary and the shift times --

13 MS. ROBESON: Okay.

14 THE WITNESS: -- which we did in our traffic
15 statement dated June 28, 2013. And looking at the number of
16 staff that arrive and depart for each of the given shifts,
17 there would be a maximum of 12 morning peak hour trips and
18 six evening peak hour trips.

19 MS. ROBESON: Okay.

20 THE WITNESS: Still a negligible amount of traffic
21 still exempt from LATR requirements.

22 MS. ROBESON: Okay.

23 MS. WALKER: And just for the record, Mr.
24 Lenhart's updated traffic study is Exhibit 21(e) in the
25 Hearing Examiner's file.

1 MS. ROBESON: Okay.

2 BY MS. WALKER:

3 Q Based upon the trip generation for this proposed
4 facility, will it be subject to the TPAR requirement and
5 when?

6 A It would be -- it's exempt from LATR.

7 Q Okay.

8 A It would be subject to TPAR at the time of the
9 preliminary plan and subdivision.

10 Q Okay. And as far as your expert opinion with
11 regard to this Georgia Avenue corridor, which is admittedly
12 a very busy corridor, do you feel that the site generated
13 traffic that we are proposing to come from this project can
14 be accommodated within that corridor safely with vehicles
15 being able to turn in and out during the applicable --

16 A Yes.

17 Q -- periods of time?

18 A Very easily. This is a very low-volume traffic
19 generator.

20 MS. ROBESON: You don't think there's an issue
21 with the U-turn for southbound Georgia?

22 THE WITNESS: No. There's a traffic signal at
23 Emory Church Road and Georgia which creates gaps in traffic.

24 MS. ROBESON: Okay.

25 THE WITNESS: The crossover at the fire station

1 that would be used for our U-turns is, it's a low-volume
2 crossover.

3 MS. ROBESON: Okay.

4 THE WITNESS: There's very little traffic that's
5 there today that uses that. The gaps that would be created
6 in northbound traffic would be more than sufficient to serve
7 the, you know, the few number of trips that we have.

8 MS. ROBESON: Okay.

9 BY MS. WALKER:

10 Q And did you prepare, also looking at Georgia
11 Avenue, a site distance study in connection with this
12 project?

13 A Yeah, State Highway requested a site distance
14 analysis, which we conducted; a field visit, going out and
15 measuring eye level to eye level from 3 1/2 feet per ASHTO
16 design guidelines. It exceeds the State Highway
17 requirements.

18 Q Okay. And have they confirmed that, in fact, they
19 have accepted your site distance study?

20 A They have. We have an August 27th letter of
21 concurrence from State Highway with the findings of my
22 report.

23 MS. ROBESON: Okay.

24 MS. WALKER: Okay. That's all I have for Mr.
25 Lenhart.

1 MS. ROBESON: All right. Thank you.

2 THE WITNESS: Thank you.

3 MS. WALKER: My next witness will be our
4 professional engineer, Frank Bossong, Pierce Consulting.
5 I'll just take a moment to get our exhibits together.

6 MS. ROBESON: Why don't we take a 5-minute recess
7 while you do that?

8 MS. WALKER: Okay.

9 MS. ROBESON: Okay?

10 MS. WALKER: Thank you.

11 MS. ROBESON: We'll be back in at 11:05.

12 (Recess.)

13 MS. ROBESON: Okay. Are the parties ready?

14 MS. WALKER: Yes.

15 MS. ROBESON: Is the court reporter ready? We're
16 back on the record. Please raise your right hand.

17 (Witness sworn.)

18 MS. ROBESON: Okay.

19 DIRECT EXAMINATION

20 BY MS. WALKER:

21 Q If you could please state your name, occupation
22 and business address for the record?

23 A For the record, my name is Frank G. Bossong, IV.
24 My work address is 19847 Century Boulevard, Suite 200,
25 Germantown, Maryland 20874.

1 MS. ROBESON: And I'm qualifying him as an
2 expert --

3 MS. WALKER: I was just going to say that.

4 MS. ROBESON: -- no matter what anybody says. So
5 his resume is in the record?

6 MS. WALKER: Yes.

7 MS. ROBESON: He's testified as an expert and he's
8 a licensed civil engineer in Maryland, correct?

9 THE WITNESS: And others, yes.

10 MS. ROBESON: And other states. All right. So --

11 MS. WALKER: He's overly qualified.

12 MS. ROBESON: He's an expert in civil engineering.

13 MS. WALKER: Thank you very much.

14 BY MS. WALKER:

15 Q Are you familiar, Mr. Bossong, with the subject
16 property and the surrounding area and have you visited the
17 site?

18 A Yes, I've been to the site several times and I am
19 familiar with the surrounding area.

20 Q Okay. And are you familiar with the state and
21 County storm water management requirements?

22 A Very much so.

23 Q And did you prepare a storm water management
24 concept plan in conjunction with this project?

25 A Yes, I did.

1 Q Okay. If you could just briefly discuss that
2 concept that you've prepared --

3 A Okay.

4 Q -- and the methodologies used to meet County and
5 state requirements?

6 A Sure. I'm going to be utilizing Exhibit 21(h) --

7 MS. ROBESON: Okay. Thank you.

8 THE WITNESS: -- which is the storm water
9 management concept plan.

10 MS. ROBESON: Okay.

11 THE WITNESS: Essentially what we are required to
12 do for the project as it's built out is meet currently the
13 local and state storm water management regulations.
14 Specifically, the new storm water 2007/2008 MDE, or state
15 storm water management regulations which basically brought
16 out the environment site design, ESD, to the maximum extent
17 probable in its MEP. So what we've done here is design the
18 storm water management facilities utilizing the ESC, the MEP
19 concept which is basically a requirement of Chapter 19 of
20 the Montgomery County Code as well.

21 The facilities that we are proposing to utilize
22 for storm water management is basically a three component
23 tier system. One is a dry well, so we're basically going to
24 take the roof water and basically put it into dry wells
25 which will basically infiltrate back into the ground.

1 That's one of the objectives of the new ESD requirements.

2 The second, the facilities that we're intending to
3 use on this project is, of course, pavement in the parking
4 areas, not necessarily the travel line areas, but in the
5 parking areas. And that is shown on Exhibit 21(h) as dark
6 areas where the, let's say parking bays are located attached
7 on this exhibit. So that will be porous pavement, again,
8 trying to do infiltration back into the ground.

9 The third level of storm water management
10 facilities that are proposed here are basically bio-
11 retention facilities. They're low, small, sort of like
12 planting areas with vegetation which will take the storm
13 water and reduce and remove the pollutants and also serve as
14 a ground water recharge facility as well. So that's
15 basically the concept of the storm water management for this
16 project.

17 A storm water management concept plan has been
18 submitted and has been under review by DPS. Although it's
19 not a requirement of this specific step, we decided because
20 of --

21 MS. ROBESON: This isn't in the special protection
22 area?

23 MS. WALKER: Correct.

24 THE WITNESS: It is not in a special protection
25 area, okay? So we don't have to deal with preliminary or

1 final water quality commands --

2 MS. ROBESON: Okay.

3 THE WITNESS: -- on this project.

4 BY MS. WALKER:

5 Q Correct. But this has been submitted because we
6 are in an RNC zone, which is environmentally sensitive?

7 A Sensitive. That's sort of -- in working with the
8 landscape architect team and the planning team because of,
9 and you brought the question up earlier about the tree
10 variances and so forth --

11 Q Right.

12 A -- we wanted to make sure that, you know, we're
13 comfortable in bringing out the whole plan, that it works
14 with the variances so there's no additional or detrimental
15 impact to trees and so --

16 MS. ROBESON: Has --

17 THE WITNESS: -- we're pretty confident that we've
18 designed a facility that meets all the Chapter 22, Chapter
19 zoning codes, 59 and as you go on.

20 MS. ROBESON: Has DEP, you said you had submitted
21 one, have they gotten back to you?

22 THE WITNESS: We, well, we had a --

23 MS. ROBESON: You just did a conceptual one,
24 right?

25 THE WITNESS: We just did a storm water management

1 concept plan which is essentially the first step in the
2 process --

3 MS. ROBESON: Right.

4 THE WITNESS: -- of a three step process in
5 Montgomery County and is basically put out by the state.
6 The first one is the concept --

7 MS. ROBESON: Right.

8 THE WITNESS: -- and then you have one at site
9 plan and then you have your final construction drawings
10 and --

11 MS. ROBESON: Right.

12 THE WITNESS: that's three steps.

13 MS. ROBESON: Well --

14 THE WITNESS: Go ahead.

15 MS. ROBESON: Go ahead, no.

16 THE WITNESS: I'm sorry, go ahead.

17 MS. ROBESON: I'm jumping ahead to another case,
18 but --

19 THE WITNESS: So we --

20 MS. ROBESON: -- so where is DEP on the
21 preliminary?

22 THE WITNESS: DEP does not review the storm water
23 management concept plans. That's DPS, Department of
24 Permitting Services.

25 MS. ROBESON: Okay. I switched, I've worked in

1 three counties and once in awhile the acronyms --

2 THE WITNESS: I'm sorry.

3 MS. ROBESON: -- confuse me. So is --

4 THE WITNESS: We submitted the storm water
5 management concept to the Montgomery County Department of
6 Permitting Services --

7 MS. ROBESON: Okay.

8 THE WITNESS: -- Water Resource Division for their
9 review.

10 MS. ROBESON: Okay. And have they gotten back to
11 you on that?

12 THE WITNESS: They, we have received, well, when
13 we first submitted, we had the one-story --

14 MS. ROBESON: I see.

15 THE WITNESS: -- so what we did was we, actually
16 the concept basically stayed the same, except we tightened
17 everything down to bring down the imperviousness --

18 MS. ROBESON: Right.

19 THE WITNESS: -- for the property. So we have
20 since resubmitted with the two-story buildings, with the
21 modified ESD facilities, gave the same concept back to DPS.
22 We are waiting for final approval.

23 They tentatively, when the first, when we went in
24 the first time, they gave us, it wasn't written, but they
25 gave us oral, okay, this is fine. It looks like you're

1 going in the right direction, have a little tweak here,
2 which we were about to do and --

3 MS. ROBESON: And then you revised the plan?

4 THE WITNESS: -- then we switched to the, to the,
5 yes, more tighter.

6 MS. ROBESON: Now under this plan, though, there
7 is less pervious area, am I correct in that?

8 THE WITNESS: That is correct.

9 MS. ROBESON: Okay. So in your professional
10 opinion, is this likely, is your revised preliminary storm
11 water concept plan likely to be improved by DPS?

12 THE WITNESS: Yes. And, again, we've had verbal
13 communication with the reviewers at DPS and they're saying
14 that this, what we see here is exactly what we're looking
15 for. In fact, the facilities, because we shrunk down, the
16 facilities got a little smaller, so the OMD --

17 MS. ROBESON: Right.

18 THE WITNESS: -- got a little smaller, so --

19 MS. ROBESON: Right.

20 THE WITNESS: -- everybody was pretty much in
21 favor of --

22 MS. ROBESON: Okay.

23 THE WITNESS: -- the latest plan.

24 MS. ROBESON: All right.

25 THE WITNESS: So we're hoping in the next couple

1 weeks we'll have a formal, you know, letter from, approving
2 the concept, the storm water management concept plan. But,
3 again, my understanding, my opinion is that specific plan is
4 not a requirement of the special exception, but it is in a
5 sense in an environmental standpoint of looking at the whole
6 picture and surrounding areas, compatibility, so and, again,
7 that we believe that, you know, that's necessary to submit,
8 though it's not a paper requirement.

9 BY MS. WALKER:

10 Q And I think you might be alluding to some of the
11 paper here, but so looking at the storm water management
12 concept, when must that be approved by as a regular --

13 A That must be approved prior to preliminary plan.

14 Q Preliminary plan?

15 A Yes.

16 Q Okay. And --

17 A And we have to go through preliminary plan and
18 subsequent site plan approval and then subsequent to that
19 final construction drawings through their review.

20 MS. ROBESON: Okay. So it's your professional
21 opinion that the current Maryland storm water management
22 requirements may be accommodated on this site?

23 THE WITNESS: May and will be.

24 MS. ROBESON: May and will be?

25 MS. WALKER: Yes.

1 MS. ROBESON: I mean you're capable of --

2 THE WITNESS: Absolutely.

3 MS. ROBESON: -- in the sense that --

4 THE WITNESS: Absolutely. Yes.

5 MS. ROBESON: Okay.

6 BY MS. WALKER:

7 Q Okay. Turning from the storm water management
8 non-required concept plan to the water and sewer hook-ups
9 for this property, so are you familiar with 59-G-1.21 with
10 the general and specific standards for special exceptions?

11 A Yes. Uh-huh.

12 Q Okay. And looking specifically at 1.21(a)(8) and
13 (9) with (8) being that the special exception will not
14 adversely affect the health, safety, security, morals or
15 general welfare of the residents, et cetera --

16 A Okay.

17 Q -- and (9) being will be adequately served by
18 public services facilities, including schools, fire
19 protection, water, sanitary and so on, with an eye toward
20 those requirements, if you could discuss now the existing
21 public facilities for this property that currently serve it
22 or are available to serve it --

23 A Okay.

24 Q -- in the context of the special exception?

25 A Okay. I'll start with general dry utilities, your

1 gas --

2 Q Okay.

3 A -- your electric, your telephones, all those
4 facilities are located within the Georgia Avenue right-of-
5 way currently and we will be tying into those facilities for
6 service through our entry road back to the facility itself.
7 So as far as the dry utilities, they're basically all
8 located within Georgia Avenue.

9 MS. ROBESON: Okay.

10 THE WITNESS: Now as going to water and sewer,
11 there's an existing 16-inch water line in Georgia Avenue,
12 actually in the pavement within Georgia Avenue, and then
13 there's an existing 8-inch sewer basically just a little bit
14 past the firehouse entrance within Georgia Avenue right-of-
15 way as well.

16 Well, what we will be doing is, from the water
17 line, since that's under pressure anyway, we'll be just
18 tying into the 16-inch water line. That's not an issue
19 there. From the sewer aspect, the way we're going to sewer
20 it, because as it was testified earlier by Ms. Russel and
21 others, the site falls away from Georgia Avenue. So we're
22 actually, we're lower than Georgia Avenue. So the sewer
23 line, the existing sewer line within Georgia Avenue is
24 obviously higher --

25 MS. ROBESON: So --

1 THE WITNESS: -- than our site.

2 MS. ROBESON: -- you can't use gravity?

3 THE WITNESS: I cannot use gravity to go, normal
4 gravity from the existing building to the existing line --

5 MS. ROBESON: Right.

6 THE WITNESS: -- or from the proposed building to
7 the existing line within Georgia Avenue. So what we will be
8 doing is we will have a pressure system which we will
9 collect sewage if you want to say from this, it's from the
10 buildings, and then pressure it back up to the gravity line
11 within Georgia Avenue. And that will be owned and
12 maintained by the property owner, as responsibility of the
13 property owner.

14 MS. ROBESON: Okay. What, did, I, for some reason
15 I'm blanking out. Did you get a water sewer category
16 change?

17 THE WITNESS: Yes. In June of 2011, a water and
18 sewer category change was conditionally approved. It was a
19 W6S6 category.

20 MS. ROBESON: Right.

21 THE WITNESS: They've approved it conditionally to
22 a W1S3 --

23 MS. ROBESON: Okay.

24 THE WITNESS: -- category pending approval of the
25 preliminary plan conditioned on the approval --

1 MS. ROBESON: Okay.

2 THE WITNESS: -- of a preliminary plan and the
3 clustering and what we've done --

4 MS. ROBESON: Right.

5 THE WITNESS: -- here. Uh-huh. So there was a
6 condition --

7 MS. ROBESON: Okay.

8 THE WITNESS: -- of the approval of that.

9 BY MS. WALKER:

10 Q So looking specific -- you referenced Ms. Russel's
11 testimony --

12 A Uh-huh.

13 Q -- page 37 of the Olney, 2005 Olney --

14 A Yes.

15 Q -- master plan has some site-specific
16 recommendations for what's known in that master plan as the
17 Dansius (phonetic sp.) property.

18 A Right.

19 MS. ROBESON: Right.

20 BY MS. WALKER:

21 Q And it discusses water and sewer in that and it
22 makes a statement in that master plan that since these
23 properties, I'm quoting now, cannot be served by public
24 sewer through gravity, they're not recommended in the sewer
25 service envelope. Is that really a correct statement that

1 it can't be served by public --

2 A I think --

3 Q -- sewer through gravity?

4 A In my professional opinion, you know, obviously it
5 can be served by public sewer. We've demonstrated that.
6 We've got a category change that it's worked out and we have
7 WSSC saying, supporting that also. I think what happened
8 back in the master plan, why this statement was written this
9 way is when they were changing it from RE-2 to RMC zone,
10 they were contemplating a residential character or
11 neighborhood that potentially could be developed on this
12 property. Because the sewer was either in Georgia Avenue or
13 substantially, a substantial distance downstream of the
14 property, the only way to get to those sewers was either you
15 pump it up to Georgia Avenue --

16 Q Okay.

17 A -- or you go by gravity through the stream valley
18 system south, east and south of the property.

19 Q Okay.

20 A If you went with the gravity system, although WSSC
21 prefers that, you'd have I'd say substantial impact to the
22 forest and other --

23 Q Right.

24 A -- environmental features that were discussed
25 earlier. So I think their concern was, just looking at it

1 from a residential standpoint, no matter how many houses you
2 put here, whether it's seven per the RNC or others, you
3 would be a neighborhood. The neighborhood would have to be
4 that the sewer and water, let's just talk about sewer, the
5 sewer would have to be basically owned and maintained by
6 WSSC. They like gravity. So, therefore, they would have
7 wanted a trunk line down through the stream valley area.

8 Obviously, from an environmental standpoint and to
9 stay in context of the master plan recommendations, that's,
10 that was basically a no no, if you want to say don't do
11 that, we don't want impacts to, you know, substantial stream
12 valley buffer area. So I think that's why they said no
13 sewer because the other thing is now you could say, well,
14 why couldn't you pump it up to Georgia Avenue such as we're
15 proposing today? WSSC's standard policy is they want
16 gravity systems. They do not want to own and maintain
17 pressure sewer systems for residential subdivisions. They
18 do it for forced mains and so forth like that. This is a
19 little different. So their standard policy saying they have
20 approved some in the past, but they would not want to
21 maintain and operate a residential pressure system going up
22 there.

23 Now with this, this is a single entity. It's
24 clustered towards, you know, Georgia Avenue, away from the
25 more denser environmental features and, therefore, they

1 don't have to maintain and operate the pressure system to
2 their gravity system. They'll still maintain their gravity
3 system. We're responsible for the pressure system. So
4 that's why I think there was a omission in the thinking back
5 at the master plan of saying what if there was a special
6 exception that came with this property? I don't think
7 people thought that way. They kind of went to the RNC and
8 said it's going to be residential and to me it is still
9 residential in nature, but residential subdivision.

10 Q Fair to say they looked at permitted uses rather
11 than special exceptions perhaps in generating that language?

12 A That's my opinion.

13 MS. ROBESON: Isn't that true? Okay.

14 BY MS. WALKER:

15 Q With regard to lighting --

16 A Uh-huh.

17 Q -- are you familiar with the lighting that's
18 proposed for the project?

19 A Yes. If I can switch to Exhibit 25(d)? And
20 what --

21 MS. WALKER: For the record, the witness has
22 identified a photometric lighting plan that's been
23 submitted.

24 THE WITNESS: What it's called is the lighting
25 plan. It's the coversheet for the lighting plan. And what

1 this plan shows, it's basically a photometric plan. I know
2 it's very difficult to read because all the numbers here,
3 but --

4 MS. ROBESON: I know.

5 THE WITNESS: -- what we are trying to show here
6 is dispersion of lighting and making sure that there's no
7 impact to adjacent properties at the property line. We use
8 the .1 foot candle, I'll say quasi-criteria, and I'll get
9 into that, why I'm saying quasi-criteria, to show that at
10 the border of our property that we are either zero or .1,
11 okay? And the reason I'm saying quasi, my interpretation of
12 County code, there's a regulation that talks about
13 residentially zoned property, that you don't want it to be
14 greater than .1 foot candles. RNC is an agricultural zone.

15 MS. ROBESON: Okay.

16 THE WITNESS: So --

17 MS. ROBESON: Okay. Just answer me this.

18 THE WITNESS: Okay.

19 MS. ROBESON: Well, I don't want to keep you from
20 making your argument, but are we at, it looks to me, I can't
21 see the little numbers, but I did look at the plan, that
22 you, even assuming this was a residential zone --

23 THE WITNESS: Correct.

24 MS. ROBESON: -- for the sake of argument, are we
25 at .1?

1 THE WITNESS: Absolutely.

2 MS. ROBESON: Okay. And does that plan show --
3 are all the foot candles shown on that plan .1?

4 THE WITNESS: At the property line or zero.

5 MS. ROBESON: Or zero?

6 THE WITNESS: Or zero, right. Yes.

7 MS. WALKER: Correct.

8 THE WITNESS: Yes. I mean for the record, we're
9 trying to, this is more of an executive summary of the lane,
10 because -- there would be, I mean we have zeros and zeros
11 here and then we may have, you know, .3 so, but it does
12 graduate down, but we were just trying to show from an
13 executive what it is for more of the travel ways and what it
14 is at the property line, otherwise this whole thing would be
15 gridded out. In fact, it is on the overall photometerics,
16 it is all gridded out. But we --

17 MS. ROBESON: You do have a -- I didn't see
18 anything above .1 at the property line --

19 THE WITNESS: No.

20 MS. ROBESON: -- on the photometric study.

21 MS. WALKER: Correct.

22 THE WITNESS: That's correct.

23 MS. ROBESON: That is in the record, right?

24 MS. WALKER: Correct.

25 THE WITNESS: That's correct.

1 MS. ROBESON: Okay. All right.

2 THE WITNESS: So to me, it meets the intent or
3 criteria of if this was considered a, you know, per what I'm
4 reading --

5 MS. ROBESON: Assuming --

6 THE WITNESS: Assuming --

7 MS. ROBESON: -- it was residential?

8 THE WITNESS: Assuming it was residential, this
9 would meet the requirements of the residential zone.

10 MS. ROBESON: Which is more strict than an
11 agricultural zone?

12 THE WITNESS: That's correct. That's correct.

13 MS. WALKER: Correct.

14 BY MS. WALKER:

15 Q And the proposed character and the lighting, how
16 would you classify that?

17 A Well, it's residential in nature. It's a lantern,
18 low type. It's not a cobra arms or anything like -- or box
19 structures, anything like that.

20 MS. ROBESON: Is it -- it's one of the ones that
21 directs light directly down?

22 THE WITNESS: Well, what we can, what we've done
23 in photometrics is, it's a lantern style on this, I'm not
24 great at details, but basically what I'm showing on Exhibit
25 25(d) on the lower portion, it's sort of what the globes

1 look like --

2 MS. ROBESON: Okay.

3 THE WITNESS: -- that would be on the posts.

4 MS. ROBESON: Yes.

5 THE WITNESS: And then there would be cut-off, in
6 other words, if you wanted to cut-off one side of the light
7 going in one direction, there would be cut-offs in the globe
8 so the light could not be reflected in that direction.

9 MS. ROBESON: Okay. Does your photometric study
10 utilize those fixtures?

11 THE WITNESS: Correct.

12 MS. ROBESON: Okay.

13 THE WITNESS: Yes.

14 BY MS. WALKER:

15 Q Yes. And with regard to the police and fire
16 component, is there adequate facilities within the area to
17 provide service to the subject property?

18 A Well, fire is very easy. It's right next door to
19 the south of the property. Police, there's basically two
20 locations of we'll say police, there's a full police station
21 down about south on Georgia Avenue area and then there's a
22 satellite office, if you want to call it a police station,
23 in the northwest, northeast quadrant of Georgia and 108,
24 which is just north of the project as well. So police and
25 fire are close to the site.

1 Q Okay. And have you prepared a Montgomery County
2 Fire and Rescue Services engineered and designed adequacy
3 plan showing them their access to the proposed facility?

4 A Yes. We've met with Murray Lavall (phonetic sp.),
5 who is the reviewer for F&R, Fire and Rescue for Montgomery
6 County. She's tentatively approved the location. She wants
7 basically to do her final approval at the site plan stage
8 when she has more details of exact door locations, door
9 openings and so forth like that, but as far as circulation
10 of the Fire and Rescue vehicles, she is satisfied with that
11 and satisfied with connection locations for, you know,
12 hydrants and where hydrants should be located.

13 Q Suffice it to say, the site has been designed
14 then, isn't it correct, to facilitate their required access
15 at later stages in the development approval process?

16 A That is correct.

17 Q And I have one last question for you. With regard
18 to road network --

19 A Okay.

20 Q -- we're showing a driveway coming into our
21 property. Is that an actual road or how would you classify
22 that?

23 A To me it's an access drive. It's not really a
24 road. It's a private, if you want to call it a road, it's
25 a private road. To me it's an access drive to get to the

1 parking lot and to the building themselves.

2 Q And that would be privately maintained, is that
3 correct?

4 A That would be privately maintained up to the
5 right-of-way line with the State Highway Administration.

6 Q Okay.

7 A They own, they basically have responsibility of
8 Georgia Avenue.

9 Q Okay. That's all I have for Mr. Bossong.

10 MS. ROBESON: Thank you.

11 MS. WALKER: And our next witness is going to be
12 our architect. Mr. Winks, if you could come up?

13 (Discussion off the record.)

14 MS. WALKER: I'll just take a moment to get his
15 exhibits --

16 MS. ROBESON: Oh, sure.

17 MS. WALKER: -- together. You can feel free to --

18 (Discussion off the record.)

19 MS. ROBESON: Okay. Please raise your right hand.

20 (Witness sworn.)

21 MS. ROBESON: Okay.

22 MS. WALKER: Thank you.

23 DIRECT EXAMINATION

24 BY MS. WALKER:

25 Q For the record, if you could please state your

1 name, occupation and business address?

2 A Edward Herbert Winks, Jr. I'm an architect at
3 Winks Snowa Architects, 2119 East Franklin Street, Richmond,
4 Virginia.

5 Q Okay.

6 MS. WALKER: For the record, we did submit Mr.
7 Winks's resume into evidence before the Hearing Examiner.

8 BY MS. WALKER:

9 Q Have you previously testified as an expert in
10 Montgomery County?

11 A I have not.

12 Q Okay. If you could just explain for the Hearing
13 Examiner a little bit about your resume, how long have you
14 been a practicing architect?

15 A I have been a practicing architect for 40 years.

16 Q Okay. And how about your educational background?

17 A I have a bachelor's of architecture from the
18 University of Virginia and I am registered in numerous
19 states, it's 18 --

20 MS. ROBESON: In Maryland?

21 THE WITNESS: In Maryland.

22 MS. ROBESON: And have you ever qualified as an
23 expert, I'm sorry if you asked this, did you ever qualify as
24 an expert in any other jurisdictions?

25 THE WITNESS: I don't think I've run into that

1 requirement before.

2 MS. ROBESON: Okay.

3 BY MS. WALKER:

4 Q Have you testified before planning commissions,
5 councils --

6 A Yes.

7 Q -- and other bodies in your capacity as an
8 architect?

9 A And even past chairman of the City of Richmond
10 Planning Commission and I've testified many times at many
11 venues.

12 MS. ROBESON: Okay. I'll accept him as an expert
13 in architecture, that's what you're --

14 MS. WALKER: Yes, please.

15 MS. ROBESON: Okay.

16 MS. WALKER: Thank you very much.

17 BY MS. WALKER:

18 Q Mr. Winks, are you, being from outside the area,
19 are you familiar with the subject property in this hearing?

20 A I am.

21 Q Have you visited the site?

22 A I have.

23 Q Okay. And if you could just briefly describe your
24 familiarity with the applicant and the design of their
25 buildings and your interactions with them in doing so?

1 A We had been working with the Hhhunt Corporation
2 for many years, since, I believe it was the early '70's, it
3 might have been the late, early '80's. It could have been
4 the late '70's. We were trying to figure that out earlier
5 today. But we've done multiple buildings in multiple states
6 from South Carolina to Tennessee to Maryland and Virginia,
7 North Carolina.

8 Q And among those buildings include assisted living
9 and Alzheimer's care facilities --

10 A Yes.

11 Q -- as are proposed here?

12 A Yes.

13 Q Okay. If you could describe in just sort of a
14 narrative or a conversational manner the building that you
15 have designed for HHHunt for this property.

16 A This building is composed of basically two
17 elements, an assisted living building and then the attached
18 what we call special care or memory care building. They are
19 connected with an interior walkway. From the exterior, they
20 will seem in many ways as one building. The buildings are
21 designed to be very residential in nature. From the street,
22 they shall, it shall appear to be a residential structure
23 that you may find in the neighborhood, a two-story building
24 with a very narrow frontage towards the street. And as you
25 go around the building, it is very much broken up into

1 residential scale elements that you would expect and you
2 will find in the neighborhood with similar materials.

3 Q And just looking now to what's been marked as
4 Exhibit 25(n) in the record already, did your office prepare
5 this rendering?

6 A We had that prepared, yes.

7 Q Okay. And do you feel that it's a fairly accurate
8 visual description of the proposed building and the
9 surroundings?

10 A It is for the building. The only thing that we
11 had to do, we couldn't put in every tree because you
12 wouldn't have seen the building at all.

13 Q Good point. And also showing on this is also in
14 the record a second rendering. Was this also prepared by
15 your office?

16 A Yes, it was.

17 Q And can you describe for the Hearing Examiner what
18 this depicts and where this is?

19 A This is the connector between the building on the
20 right, which is the assisted living building, and the
21 building on the left which is the memory care building.

22 Q So it's a two-story connector that we're seeing
23 here?

24 A Yes, it is.

25 Q Okay. And if you could just briefly describe, I

1 think this shows it pretty well, but the materials that are
2 being proposed for construction?

3 A Yes. The residential scale materials, brick and
4 siding, as you would find typically in the neighborhood.

5 Q And if we could move now to a little bit more
6 detail on the floor plans. We have posted here Exhibits
7 25(g) and (h), which are the floor plans and the elevations
8 that are in the record for the facility. If you could just
9 highlight, you're going through each one of these for the
10 Hearing Examiner, the facilities, how they lay out and which
11 uses are on each level?

12 A Well, this is a, pretty much a subterranean level.
13 As the site drops off in the back, we took advantage of
14 this. It would be a walkout basement in a residential
15 sense. But we have our main kitchen for preparation of food
16 for the dining room which is above that here. We'll have a
17 theater. We will have our staff and support facilities, our
18 laundries and whatever on the lower level, but also taking
19 advantage of the possibility of having windows, which you
20 will see on the elevation, along this pristine area behind
21 here. We are making that accessible for residents to come
22 to medical office locations, therapy areas and indoor spa-
23 type pool situation.

24 As you go to the main level, you'll see the
25 building has a central entrance with wings with residential

1 units on each end. At each end, there's a small
2 neighborhood sitting area. But the grander spaces, common
3 spaces are a living room right off the entrance; a cafe,
4 which enters also into a sunroom for extended stays in the
5 morning. We have a dining room with an outdoor terrace
6 that's elevated overlooking the pretty much permanent green
7 space behind us, servery for the kitchen. We have the
8 administrative offices. We have a private dining room and a
9 wellness center, like a fitness center on this level.

10 Q And that's the first floor plan that you're
11 referring to?

12 A Yes, that was.

13 Q Of the assisted living --

14 A Yes.

15 Q -- component?

16 A Correct. As we go upstairs, again, we have the
17 individual apartments for the residents on either wing and
18 in the center we have spaces for like a country store. It's
19 like a little store for the folks to buy things. There is a
20 puzzle room, a salon and a multi-roomed library functioned
21 with quiet areas, with more active areas, with computer
22 areas. So this is pretty much the most extensive amenity
23 package we've ever provided and we've done a lot of assisted
24 living.

25 Q Before we leave the assisted living building, if

1 you could just briefly describe the nature of the types of
2 resident units that are involved in the construction?

3 A We have one bedroom units and we have studio
4 units, and we have a pretty good balance of those here.

5 Q Do they each have a kitchen facility or
6 kitchenette?

7 A They each have a kitchenette, but most the, all
8 the, we expect that everyone will be eating in the main
9 dining room.

10 Q But bathroom and kitchen facilities for each unit,
11 individual unit?

12 A That is correct. All right. Attached to that by
13 this connector is the memory care building and it has a
14 central entrance. And because of the nature of the topo and
15 the request of the neighborhood, this building, which
16 formerly was on one level, we found a way to put it on two
17 levels. So we had to create a building that had two first
18 floors. And we have done that with each floor having its
19 own dining room, it's own serving kitchen and support
20 facilities, a living room at each end that goes out onto an
21 outdoor terrace area --

22 MS. ROBESON: Yes.

23 THE WITNESS: -- and we have a family room in each
24 one. We also have nurses' facilities and an activity room,
25 and that's on each level.

1 MS. ROBESON: Okay.

2 THE WITNESS: So this next level basically shows
3 the same thing because they stack. On the exterior of the
4 building, I mentioned that we had a dining room that, with
5 an elevated dining terrace, outdoor dining terrace.

6 MS. WALKER: Just, if I could interrupt for one
7 second? For the record, the sheet that the architect is
8 referring to in his testimony is A2.01, which is the
9 elevation of this.

10 MS. ROBESON: Okay. And is the top elevation on
11 that sheet, is that the -- which building is that, the --

12 THE WITNESS: This is the assisted living
13 building.

14 MS. ROBESON: Assisted living and that's --

15 THE WITNESS: The larger.

16 MS. ROBESON: -- looking southeast?

17 THE WITNESS: Well --

18 MS. ROBESON: I mean that's, that's the view -- I
19 mean that's --

20 MS. WALKER: That's the view that's looking
21 interior to the site.

22 MS. ROBESON: -- it's not looking southeast.

23 MS. WALKER: That's the view that's not looking at
24 Georgia Avenue.

25 THE WITNESS: This is the assisted living

1 building.

2 MS. ROBESON: And the rear elevation is the
3 elevation that is adjacent to the --

4 THE WITNESS: Fire station.

5 MS. ROBESON: And the forest?

6 THE WITNESS: -- and the west area.

7 MS. ROBESON: Okay. All right.

8 THE WITNESS: So I, the most prominent element
9 would be the on the rear, would be the elevated porch here.
10 You can see how the building is fragmented into residential
11 scale components.

12 MS. ROBESON: Okay.

13 THE WITNESS: The front elevation, as you come in,
14 you'll have a porch for residents to sit on out front.
15 You'll see the arched windows for the library upstairs. And
16 we have several types of windows just to help break up the
17 scale and the building will be done in components of brick
18 primarily for the projected portions and siding for the
19 recessed components, so to fragment it so it doesn't seem
20 like one really large building, but smaller components. And
21 the end that faces the road is very negligible.

22 MS. ROBESON: So you've minimized the road
23 frontage?

24 THE WITNESS: Yes. For the memory care building,
25 we have elements very similar to the other building and I

1 mentioned where that would, it's going to appear maybe from
2 the street as a one-story building on the entrance side, on
3 the other side facing or the green space at the back it will
4 appear to be more of a two-story building. In fact, this is
5 a two-story building here. We've just, there's a landscaped
6 area --

7 MS. ROBESON: I see.

8 THE WITNESS: -- that goes up to a retaining wall.

9 MS. ROBESON: Right. Okay.

10 THE WITNESS: Any other questions on the building?

11 BY MS. WALKER:

12 Q No, isn't -- just referring to the rendering, is
13 this the area that you're referring to that has the --

14 A No, it's --

15 Q Could you point out this area where this is on
16 the --

17 A Yes.

18 Q -- site plan --

19 A Yes.

20 Q -- just so that the Hearing Examiner is clear of
21 the relationship between --

22 A Yes.

23 Q -- the buildings?

24 A That is the space, well, excuse me, in here. That
25 picture is from here looking at this connector between the

1 larger assisted living building and the smaller memory care
2 building.

3 MS. ROBESON: Okay.

4 BY MS. WALKER:

5 Q Just to put it into context --

6 A Yes.

7 Q -- I think that's helpful. In the Montgomery --
8 you can have a seat please. Thank you. In the Montgomery
9 County zoning ordinance, there are certain requirements that
10 state that for special exceptions it should cause no
11 objectionable noise, vibration, fumes, odor, dust,
12 elimination glare on the site and I'm just wondering if you
13 could opine as to whether you think that the building you've
14 designed will meet that criteria?

15 A I think we will meet that criteria.

16 Q Okay. And the building as you've designed it will
17 be compliant with the Americans with Disabilities Act for
18 access?

19 A Yeah, it will be.

20 Q Okay.

21 MS. WALKER: That is all that I have for the
22 architect.

23 MS. ROBESON: Okay. Thank you very much.

24 THE WITNESS: Thank you.

25 MS. WALKER: Thank you very much. And in record

1 time, my last witness, who is the representative from the
2 applicant, Bo Cook.

3 MS. ROBESON: Okay. Please raise your right hand.

4 (Witness sworn.)

5 MS. ROBESON: Thank you.

6 DIRECT EXAMINATION

7 BY MS. WALKER:

8 Q If you could please state your name, occupation
9 and business address for the record?

10 A Certainly. My name is William Robert Cook, Jr.,
11 also known as Bo. I work for Hhhunt Corporation and I'm a
12 vice president of development. We are located at 1401
13 Sunday Drive, Suite 109, in Raleigh, North Carolina.

14 Q If you could just describe your experience in
15 developing senior housing facilities and these Alzheimer
16 dementia care?

17 A I've been with Hhhunt for 25 years. During that
18 time, we've developed 26, 27 assisted living facilities and
19 I've been involved in every one of them, or the development
20 stage. So I'm very well aware of everything that goes into
21 them and the operations of those facilities.

22 Q And if you could just describe briefly your
23 educational background so we understand sort of what your
24 context is?

25 A Sure. I have a bachelor's of business finance and

1 I received it from Virginia Tech in -- several years ago.

2 Q I'm sorry. Did we swear-in the witness? I just
3 want to --

4 MS. ROBESON: Yes.

5 MS. WALKER: I thought so. Okay. That's Mr.
6 Bossong leading me astray.

7 MS. ROBESON: No, he's caught me before.

8 MS. WALKER: Well, I thought, I thought --

9 MS. ROBESON: I --

10 MS. WALKER: -- I thought, I think we already did
11 that, but --

12 MS. ROBESON: -- I cannot tell a lie. He has
13 caught me, but this time I did do it. So go, so --

14 MS. WALKER: I just wanted to double-check.

15 MS. ROBESON: No, no, it's fine.

16 BY MS. WALKER:

17 Q And although not being from the area, have you
18 through this process familiarized yourself with the
19 requirements for special exceptions?

20 A Very much so.

21 Q Probably ad nauseum. And are you aware of the
22 County and state licensing requirements for domiciliary care
23 and nursing facilities?

24 A We are.

25 Q And do you involve yourself in or have knowledge

1 of the day-to-day operations of these senior housing and
2 Alzheimer's dementia care facilities?

3 A Very much so because it really dictates the design
4 of the structure, so we're very intimately involved with the
5 management and the going ons of what happens inside the
6 building all the time. So --

7 Q And you understand, you were present at the
8 Planning Board hearing, is that correct?

9 A I was.

10 Q And you understand that they have the ability to
11 recommend conditions of approval which may be imposed by the
12 Board of Appeals as well as the Hearing Examiner on this
13 application?

14 A Yes.

15 Q And it's your intent to bind the applicant to
16 adhere to those conditions?

17 A Yes.

18 Q Okay. Just looking specifically, and I should say
19 to you the statement of operations has been revised and is
20 in the record. I don't want to --

21 MS. ROBESON: I saw that and I thank you for
22 providing the marked up version. That was quite helpful.

23 MS. WALKER: Oh, certainly. I'm pleased to do
24 that. We -- I don't want to go through that, you know,
25 completely in its entirety, but I think because it is part

1 of the record already --

2 MS. ROBESON: Well, let me just ask you, one of
3 the conditions on the special exception that we normally put
4 on is that you are bound by your evidence and testimony of
5 record, including the statement of operations. That's a
6 condition of approval.

7 THE WITNESS: Right.

8 MS. ROBESON: So do you agree to abide by your
9 statement of operations?

10 THE WITNESS: Absolutely.

11 MS. ROBESON: Okay.

12 MS. WALKER: Perfect. And I'll just point to a
13 few of the high points in the statement as a means of, I
14 think, further explaining the low impact nature of the
15 special exception on the neighborhood.

16 MS. ROBESON: Okay. That's fine.

17 BY MS. WALKER:

18 Q If you will, it's in the statement that there's
19 going to be 100 staff who are going to be onsite. That
20 includes, I believe, correct me if I'm wrong,
21 administrative, medical, nursing staff and a marketing
22 staff, is that correct?

23 A Correct.

24 Q And approximately how many different shifts are
25 those staff members taking on the site?

1 A Typically there's three main shifts and then we
2 have kind of sub-shifts of different functions coming in at
3 different times.

4 Q Okay. I believe in the statement we show 11
5 different shifts, does that sound correct to you?

6 A Yes, and that would -- just for example, the
7 kitchen staff would come in prior to the care staff in the
8 morning. So if you're looking at specific shift times,
9 11:00 would probably be accurate.

10 Q Okay. And with regard to those shifts, are you
11 aware that we have placed a limitation on the maximum number
12 of people to be onsite at any given time?

13 A Yes.

14 Q And do you know what that limitation is?

15 A Fifty.

16 Q Okay. And you think that that's adequate in
17 looking at those 11 different shifts and the times that are
18 estimated in the statement that you're going to --

19 A Yes.

20 Q -- bind yourself to? Okay. Looking also at
21 special events and things that would occur on this nature,
22 maybe on the site outside of the day-to-day activity, are
23 there any such events that you anticipate?

24 A Yes. We will have events throughout the year
25 basically for families to come in to share with their loved

1 one that lives with us. Typically they're seasonal.

2 MS. ROBESON: Are they off-peak hours, in other
3 words?

4 THE WITNESS: They'll be off-peak hours and it
5 really will be structured around the traffic issues because
6 if there's a lot of traffic, then you, you know, people
7 won't want to come. So they're definitely structured
8 around, you know, how --

9 MS. ROBESON: Daytime, weekends?

10 THE WITNESS: Yes, evening or --

11 MS. ROBESON: Or evening?

12 THE WITNESS: Yeah.

13 BY MS. WALKER:

14 Q And just also with an eye toward the traffic
15 coming in and out of the site there, as far as residents
16 moving in and moving out, can you speak a little bit to that
17 and how that's accomplished when the building is new?
18 Obviously, it's going to be vacant when it's first built.
19 Approximately how many move-ins do you think you have per
20 month for the first, you know, few months?

21 A Well, typically what we'll have is a bulk move-in
22 right when we open and that usually occurs over the first
23 four weeks. You'll have people that you'll sign up prior to
24 the actual completion. So you'll have, typically you
25 wouldn't have more than 30 kind of residents that would move

1 in during that first period. After that it kind of, kind of
2 varies. But as we fill the building up, you'll probably
3 have, you could have 10 a month. And then once you are up
4 and operational, you may have four to five kind of rotating
5 in and out.

6 Q And those would be scheduled during off-peak hours
7 to occur?

8 A Yes. Uh-huh. Right.

9 Q And will this facility also have a security and a
10 fire alarm monitoring system?

11 A Yes. We have a very sophisticated security system
12 that monitors the movements of the residents. The security
13 system is a more intense system for the memory care,
14 Alzheimer's, just by nature of who those people are or the
15 disease they have. Fire, we have fire alarms throughout.
16 We are a fully sprinkler building.

17 Q If we could also just discuss, there's not a lot
18 of detail on the special exception site plan with regard to
19 those outdoor courtyard spaces that are associated with the
20 memory care building. If you could just give the Hearing
21 Examiner a flavor of what typically goes on there and what
22 sorts of amenities might be in that space?

23 A This space in the courtyard?

24 Q The outdoor -- I'll point using --

25 A The specialty here?

1 Q The specialty here, yes.

2 A Oh, sure.

3 Q There's two outdoor, enclosed --

4 A Right.

5 Q -- secured courtyard facilities for use in the
6 residence of the specialty area.

7 A Basically that's their outdoor recreational area
8 and typically what we'll have is sitting areas out there.
9 We'll have just a small walking path within that area.
10 We'll have outdoor activities. We'll have elevated planting
11 areas. Basically it's just an area that they have that they
12 can go out supervised, but yet they can go out by themselves
13 and still be monitored. We have cameras. We have people,
14 staffed stations that are right near there. Basically it's
15 just their outdoor space in a secured environment.

16 MS. ROBESON: Now where is the outdoor space
17 for -- is there assisted living outdoor space?

18 THE WITNESS: Basically what we have there is we
19 always include a walking path that surrounds the building
20 and this is the case for this particular site as well. And
21 what we try to do is we have areas along that path that
22 invite residents to stop and sit and we'll have some sitting
23 areas throughout. And a lot of it is in the front, but then
24 we'll have something there at the rear to kind of take
25 advantage of that wetlands area as well.

1 MS. ROBESON: Okay. Now you're right next to a
2 fire station. I, well, do you have anyone on noise or are
3 you not --

4 MS. WALKER: We submitted a noise study into the
5 record that showed that based upon the road noise and the
6 typical noise generated around the site that we met the
7 decibel level standard. That will be looked at more
8 carefully when we get to the site plan review phase --

9 MS. ROBESON: Okay.

10 MS. WALKER: -- from Park and Planning, but we
11 don't anticipate that there's any issues. I think the only
12 issue that the noise study raised was we have a passive
13 recreational, sort of an open space here toward the front --

14 MS. ROBESON: Okay.

15 MS. WALKER: -- and there was toward the front of
16 the side along Georgia Avenue and there was some discussion
17 that we might need to either beef up the landscaping or have
18 some sort of a barrier --

19 MS. ROBESON: Barrier?

20 MS. WALKER: -- like a noise mitigation fencing of
21 the type, maybe around that area.

22 MS. ROBESON: Okay.

23 MS. WALKER: But otherwise there was no other
24 projected impact throughout the site.

25 MS. ROBESON: And that's in the report?

1 MS. WALKER: It's in the report, correct.

2 MS. ROBESON: I saw --

3 MS. WALKER: It's on the cover page.

4 MS. ROBESON: I'm sure I saw that. Okay.

5 MS. WALKER: Yes. And then I should point out to
6 you that that, just for the record, that that report was
7 updated when the building was retooled, if you will --

8 MS. ROBESON: Re-sited? Okay.

9 MS. WALKER: -- so they have weighed in since the
10 new design features have been added.

11 MS. ROBESON: Okay.

12 MS. WALKER: Just to further proffer, if you will,
13 based upon Mr. Cook's testimony, there are, I believe it's
14 four outdoor areas that are specifically, as I pointed
15 out --

16 MS. ROBESON: Well, why don't --

17 MS. WALKER: -- the mews up here.

18 MS. ROBESON: Why don't, are you able to show
19 me -- why don't we have it from the witness?

20 MS. WALKER: Sure. That's fine. I mean he had
21 proffered there was three or four of those. I would just
22 like the record to reflect they are noted on the plan. We
23 don't really need to go through that unless the Hearing
24 Examiner --

25 MS. ROBESON: Oh, okay.

1 MS. WALKER: -- would like to.

2 MS. ROBESON: If they're noted on the plan, I'm
3 fine with that.

4 MS. WALKER: They are shown on the landscape plan
5 in particular.

6 MS. ROBESON: Okay.

7 MS. WALKER: Some of them are a mix of hardscape
8 and so on.

9 MS. ROBESON: Okay. And --

10 MS. WALKER: They're identified as gathering
11 places, excuse me --

12 MS. ROBESON: On the plan?

13 MS. WALKER: -- on the plan.

14 MS. ROBESON: Okay.

15 MS. WALKER: So they are noted on there.

16 MS. ROBESON: Thank you.

17 BY MS. WALKER:

18 Q With regard to emergency back-up power systems for
19 this, is there a generator that's proposed as part of the
20 special exception use?

21 A We do have a generator. What we have learned from
22 experience is that you need to have the back-up power for
23 the essential services of the buildings. What we try to do
24 is to have a system design that's large enough to take care
25 of keeping the food being prepared so we can continue that.

1 We have, can't keep the entire building with heat, but we do
2 keep certain areas that we'll have heat and air conditioning
3 throughout. All of the emergency systems are on the
4 generator that are needed, so what we try to do is to have a
5 scaled down means of continuing our operations. The goal is
6 is to keep people in place while we have -- inclement
7 weather is typically what would cause that.

8 Q And if you could just point out for the Hearing
9 Examiner the location of that generator just so she's clear
10 on that?

11 A The generator is in the rear portion of the
12 building right near the service entrance to the lower level.

13 Q Of the assisted living building?

14 A Yes, of the assisted living building. We actually
15 have that in an enclosure right next to the dumpster.

16 MS. ROBESON: Okay.

17 BY MS. WALKER:

18 Q And that's closest --

19 A So --

20 Q -- to the fire station side of the property, is
21 that correct?

22 MS. ROBESON: Right.

23 THE WITNESS: Correct. And that's -- we actually
24 utilize a natural gas powered generator and by doing that,
25 that's one of the quietest methods to, with natural gas it's

1 the quietest operation of a generator.

2 MS. ROBESON: Okay.

3 THE WITNESS: So we're happy that it's there. You
4 know, our residents, if it has to come on, they're glad it
5 comes on. So --

6 BY MS. WALKER:

7 Q Certainly. With regard to programming and
8 activities, I think we've, or heard from the architecture a
9 view of the floor plan, that there's pretty substantial
10 spaces that are available for residents to use. Are you
11 also proposing to have any shuttle bus service for the
12 residents to go shopping offsite?

13 A Yes. We have several vehicles. We have a large
14 vehicle that will take them on a, they go on excursions. We
15 go on shopping trips. So we're self-sufficient in the need
16 for transportation. We'll also provide services to doctor's
17 appointments and whatnot in a smaller vehicle, but we try to
18 take care of all the needs of the residents that live with
19 us.

20 Q Okay. And just one last thing with regard to
21 signage, are you aware that there is signage proposed for
22 the property?

23 A I am.

24 Q Can you point to the Hearing Examiner to where the
25 signage is proposed to be placed?

1 A Basically we'll have an entry sign up in the area
2 of the entry road. It will be the main sign that will be,
3 kind of this white sign. Once we get down into the site,
4 we'll have smaller signs that just direct a person to the
5 right location, but they will be just direction.

6 Q Just to each building and --

7 A Right.

8 Q Okay.

9 A Uh-huh.

10 Q And with regard to the signage, is it your
11 understanding that that meets the requirement in the zoning
12 ordinance without necessitating a variance?

13 A It is.

14 MS. ROBESON: Now the Planning Board added a
15 condition. I assume you're okay with the conditions
16 recommended by Technical Staff, but the Planning Board added
17 a condition, delivery by semi-trailer trucks must not exceed
18 six times a week.

19 THE WITNESS: Correct.

20 MS. ROBESON: Are you, do you agree to that or
21 are --

22 THE WITNESS: I think what their issue was was the
23 larger tractor trailers coming in and we actually had, I
24 guess in our paperwork, had three listed and they questioned
25 that. And then we actually modified that to six per week.

1 So --

2 MS. ROBESON: Okay.

3 THE WITNESS: -- they brought it up. So --

4 MS. WALKER: But, yes, there's enough flexibility
5 in there, I think, is the question to accommodate the use
6 without going over that condition.

7 MS. ROBESON: No, I just want to make sure he's
8 okay with it.

9 THE WITNESS: Yes.

10 MS. ROBESON: Are you okay with that --

11 THE WITNESS: Yeah, for tractor trailers.

12 MS. ROBESON: -- colloquially? Yes. All right.

13 THE WITNESS: Yeah.

14 MS. WALKER: Certainly. That's all that I have
15 for the applicant, unless the Hearing Examiner has any
16 further questions --

17 MS. ROBESON: I do not.

18 MS. WALKER: -- on the statement.

19 THE WITNESS: I would like to clarify one thing on
20 the --

21 MS. ROBESON: Okay.

22 THE WITNESS: -- the units versus the beds, if you
23 want to call it beds. You had noted that, or somebody noted
24 that we would have married couples or couples in the
25 assisted living, but we would also have some companions

1 within the special care.

2 MS. ROBESON: I see.

3 THE WITNESS: So what we have found is that in
4 certain situations a person with Alzheimer's functions very
5 well with a roommate. So there's an opportunity to have
6 comparisons in the special care here as well.

7 MS. ROBESON: Okay. Now would they be employees
8 or would they be just friends or professional companions?

9 THE WITNESS: No, they would be just another
10 resident.

11 MS. ROBESON: Another resident?

12 MS. WALKER: To be clear, they refer to the
13 double --

14 MS. ROBESON: I'm sorry.

15 MS. WALKER: -- occupancy room as companion rooms.
16 I think that's the --

17 MS. ROBESON: Okay. I understand.

18 THE WITNESS: Yes.

19 MS. ROBESON: Thank you for that clarification.
20 Okay. Anything else?

21 MS. WALKER: No, that's all that we have.

22 MS. ROBESON: Okay.

23 MS. WALKER: I should, if the Hearing Examiner
24 would like, I do have two disks that contain the additional
25 exhibits that we introduced today.

1 MS. ROBESON: I was just going to ask you that and
2 also does that have a full copy of all three pages of this
3 site plan? What I would --

4 (Discussion off the record.)

5 MS. WALKER: All three pages, yes, Your Honor.

6 MS. ROBESON: Okay. Well, I think for the record
7 what I'm going to need is all three pages of the special
8 exception site plan, and this is just to help you with
9 recordkeeping because they'll ask for a certified copy of
10 the site plan from the Board of Appeals when you go to site
11 plan.

12 MS. WALKER: Okay.

13 MS. ROBESON: And I don't want to have to hand
14 them one sheet and then two sheets.

15 MS. WALKER: Sure.

16 MS. ROBESON: So if you can just submit --

17 MS. WALKER: A fresh copy?

18 MS. ROBESON: -- a fresh copy with all three
19 sheets current, then -- and with your permission I'll add it
20 to whatever the next, and that way you'll just have one
21 plan. And then when you go to process this through site
22 plan, it will be much easier than trying to piece through
23 two pages of this and one page of this.

24 MS. WALKER: Certainly. We can provide that and
25 would you like to add the disks as well into the --

1 MS. ROBESON: Yes.

2 MS. WALKER: -- record as exhibits?

3 MS. ROBESON: Now does the disk, does the site
4 plan on the disk, is that all three pages current?

5 MS. WALKER: Yes.

6 MS. ROBESON: Okay. Then I just need one paper
7 copy from you --

8 MS. WALKER: Okay.

9 MS. ROBESON: -- of all three pages current. So
10 this will be Exhibit 36 which will be electronic copies of
11 exhibits.

12 (Exhibit No. 36 was marked for
13 identification.)

14 MS. WALKER: We believe we can get the full-size
15 set to you probably by Monday.

16 MS. ROBESON: Well, that's fine because it takes
17 me, I have to leave the record open for 10 days to get the
18 transcript.

19 MS. WALKER: Okay.

20 MS. ROBESON: So during that 10-day time period if
21 you could -- so 10 days would be, well, it would be until
22 the 15th. I don't know if the 14th is a County holiday or
23 not, but I'll say the 15th.

24 MS. WALKER: Okay.

25 MS. ROBESON: So the record will close the 15th

1 and within that time frame if you could get me that clean
2 exhibit, that would be helpful.

3 MS. WALKER: Not a problem.

4 MS. ROBESON: All right.

5 MS. WALKER: Thank you. Thank you for your time
6 today.

7 MS. ROBESON: Anything else?

8 MS. WALKER: No.

9 MS. ROBESON: Thank you very much and this hearing
10 is adjourned.

11 (Whereupon, at 11:59 a.m., the hearing was
12 adjourned.)

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% Digitally signed by Tracy M. Hahn

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings in the matter of:

Petition of HHHUNT CORPORATION NURSING HOME

Local Map Amendment No. S-2841

By:



Tracy M. Hahn, Transcriber